TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 103

THE FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, PLAINTIFF IN ERROR,

vs.

JOHN W. WATT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JULY 9, 1900.

(17,826.)

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INDEX.

	Original.	Print.
Petition for writ of error	1	1
Order allowing writ of error	3	1
Assignment of errors	4	2
Writ of error	6	2
Citation	9	3
Acceptance of service of citation	10	3
Bond on writ of error	11	3
Assignment of errors	14	5
Caption	16	6
Transcript from district court of Lincoln county	16	6
Notice of motion for new trial	16	6
Complaint	17	6
Answer	22	10
Exhibit 1—Note, John W. Watt, December 31, 1896	23	10
4—Note, Wilson and C. S. Watt, Sept. 26, 1895	23	10
6—Lettter, cashier to Will Watt, October 6, 1897	23	11
7—Letter, J. W. Watt to cashier, February 25, 1897; letter, cashier to J. W. Watt, February 27, 1897	24	11
8—Statement of interest due	24	11
9—Deed, Wilson Watt *et ux.* to J. W. Watt, November 2, 1895	24	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 5, 1901.

	Original	Print
Evidence	26	12
Testimony of J. B. Sullivan	26	13
John W. Watt	39	22
J. B. Sullivan (recalled)	50	30
J. B. Sullivan (recalled)	61	38
Charge to jury	63	39
Defendant's exceptions to charge	66	41
Verdict	67	42
Reporter's certificate	68	42
Judge's certificate to settled case	68	42
Order denying motion for new trial	68	43
Notice of appeal	71	44
Mandate of supreme court of Minnesota	72	44
Judgment on mandate	74	45
Notice of appeal	76	46
Opinion on first appeal	77	46
Opinion on second appeal	82	48
Judgment	85	49
Order for judgment	87	50
Minutes of argument	89	51
Clerk's certificate	92	51

1 Supreme Court of the State of Minnesota.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Appellant.

The First National Bank of Lake Benton, Minnesota, defendant in the above-entitled cause, feeling itself aggrieved by the judgment entered on the 12th day of May, 1900, comes now by Davis, Kellogg & Severance, its attorneys, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

JOHN McKENZIE &
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendant.

2 [Endorsed:] John McKenzie & Davis, Kellogg & Severance, att'ys for petitioner.

3 STATE OF MINNESOTA:

Supreme Court, April Term, 1900.

Present: The Honorable Charles M. Start, chief justice.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Appellant.

Upon motion of Davis, Kellogg & Severance, attorneys for defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be, and hereby is allowed to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is fixed at five hundred dollars.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

4 STATE OF MINNESOTA:

Supreme Court, April Term, 1900.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Appellant.

Comes now the defendant, and files the following assignments of error upon which it will rely in the prosecution of the writ of error in the above-entitled cause,

First. The court erred in entering said judgment for the amount claimed in the complaint, the same being for twice the interest paid by respondent to appellant.

Second. The court erred in holding that under sections 5197 and 5198, Revised Statutes of the United States defendant and appellant is liable for double the amount of the interest paid instead of double the amount of usurious interest paid.

JOHN McKENZIE &
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendant.

5 [Endorsed:] State of Minnesota supreme court. John W. Watt *v.* The First National Bank of Lake Benton, Minnesota. John McKenzie & Davis, Kellogg & Severance, att'ys for petitioner.

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The First National Bank of Lake Benton, Minnesota, defendant, and plaintiff in error, and John W. Watt, plaintiff, and defendant in error, wherein was drawn in question the construction of a clause of the statute of the United States, and the decision was against the right, title, privilege or exemption specially set up or claimed under such clause of the statute, a manifest error hath happened to the great damage of the said First National Bank of Lake Benton, Minnesota, plaintiff in error, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington in the District of Columbia, on the 14th day of June, 1900, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid,

being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and accord-
7 ing to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the fourteenth day of May, 1900.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of U. S. Circuit Court for the District of Minnesota.

8 [Endorsed:] Writ of error. John McKenzie & Davis, Kellogg & Severance, att'ys for pl'ff in error.

9 STATE OF MINNESOTA:

Supreme Court.

The State of Minnesota to John W. Watt and F. L. James, his attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be held at the city of Washington in the District of Columbia, United States of America, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The First National Bank of Lake Benton, Minnesota, is the plaintiff in error, and you John W. Watt are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota, at the capitol in the city of St. Paul, this 14th day of May, A. D. 1900.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

10 [Endorsed:] Original. State of Minnesota supreme court. John W. Watt *vs.* First Nat'l Bank of Lake Benton, Minn. Citation. Due service of the within citation admitted this — day of May, 1900. F. L. James, att'y for def't in error. John McKenzie & Davis, Kellogg & Severance, att'ys for pl'ff in error.

11 STATE OF MINNESOTA:

Supreme Court.

FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Plaintiff in Error,
vs.
JOHN W. WATT, Defendant in Error.

Know all men by these presents, that we, the First National Bank of Lake Benton, Minnesota, as principal, and Hans Lavesson and

Kittel G. Skartum, as sureties, are held and firmly bound unto John Watt above named, in the sum of five hundred dollars, to be paid to the said John W. Watt, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our representatives, successors and assigns, firmly by these presents.

Sealed with our seals and dated the third day of May, 1900.

Whereas, the above-named plaintiff in error has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above-entitled cause by the supreme court of the State of Minnesota.

Now therefore, the condition of this obligation is such that if the above-named, The First National Bank of Lake Benton, Minnesota, shall prosecute said writ to effect, and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

FIRST NATIONAL BANK OF LAKE
BENTON, MINN., [SEAL.]
By J. B. SULLIVAN, *Cashier.* [SEAL.]
HANS LAVESSON. [SEAL.]
KITTLE G. SKARTUM. [SEAL.]

In presence of—

L. P. JOHNSON.
C. A. ADAMS.

12 STATE OF MINNESOTA, } ss:
County of Hennepin, }

Be it known, that on this 12th day of May, 1900, came before me personally Hans Lavessen & Kittle G. Skartum to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged the same to be his own free act and deed.

L. P. JOHNSON,
Notary Public, Minn. [SEAL.]

STATE OF MINNESOTA, } ss:
County of Hennepin, }

Hans Lavessen and Kittle G. Skartum came before me personally, and being by me first duly sworn, doth say each for himself, that he is the surety above named; that he is a resident and freeholder of and in the State of Minnesota, and worth the amount of five hundred dollars specified in the foregoing bond, above his debts and liabilities, and exclusive of his property which is exempt from execution.

HANS LAVESSEN.
KITTLE G. SKARTUM.

Subscribed and sworn to before me this 12th day of May, 1900.

L. P. JOHNSON,
[SEAL.] *Notary Public, Hennepin County, Minnesota.*

13 [Endorsed:] Supreme court State of Minnesota. First National Bank of Lake Benton Minn. plaintiff in error *vs.* John W. Watt defendant in error. Copy of bond on writ of error. I hereby approve the within bond, and the sureties thereon. Dated May 14, A. D. 1900. Chas. M. Stuat chief justice. John McKenzie & Davis, Kellogg & Severance, att'ys for pl'ff in error.

14 *Assignment of Errors.*

1. The court erred in instructing the jury that "if the jury find from the evidence that any amount included in plaintiff's note, Exhibit 'A,' in excess of ten per cent. was knowingly included by the defendant for the loan or forbearance of the money to the
15 plaintiff, then the plaintiff is entitled to recover of the defendant twice the amount of interest thus paid by plaintiff. It is proved without contradiction that on the 23rd. day of October, 1897, the plaintiff paid to the defendant $1,603.20, the full amount due on his note, Exhibit 'A,' and if the plaintiff recover, he is entitled to recover twice the amount of interest included in this amount so paid." (Folios 247 and 248. Paper book.)

2. The court erred in refusing to give defendant's first request for instructions. (Folio 253. Paper book.)

3. The court erred in refusing to give defendant's second request for instructions. (Folios 254 and 255. Paper book.)

4. The court erred in denying defendant's motion for new trial on the ground: 1st—That the verdict is not justified by the evidence. 2nd—That the verdict is contrary to law, and 3rd—Error in law occurring at the trial and excepted to by the defendant.

5. The court erred in entering said judgment for the amount claimed in the complaint, the same being for twice the interest paid by respondent to appellant.

6. The court erred in holding that under sections 5197 and 5198, Revised Statutes of the United States, appellant is liable for double the amount of the interest paid instead of double the amount of usurious interest paid.

In support of its position with reference to the assignments of error appellant cites the following authorities.

Heintermister *vs.* National Bank 64 N. Y. 212; 2 Lawson's Rights and Remedies, 518; Lynch *vs.* Merchants' National Bank, 22 West Va., 554; Bobo *vs.* People's National Bank, 21 S. W., 888 and Hardin *vs.* Tremmer, 30 So. Car., 391.

Respectfully submitted.

DAVIS, KELLOGG & SEVERANCE,
St. Paul, Minnesota, and
JOHN McKENZIE,
Lake Benton, Minnesota,
Appellant's Attorneys.

16 Supreme Court, State of Minnesota, April Term, 1899.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Appellant.

F. L. Janes, Pipestone, Minnesota, respondent's attorney. John McKenzie, Lake Benton, Minnesota, appellant's attorney.

Notice of Motion for New Trial.

STATE OF MINNESOTA, *County of Lincoln*, } ss:

District Court, Ninth Judicial District.

To F. L. Janes, Esq., Pipestone, Minn.:

You will please take notice that the within is defendant's proposed case and bill of exception in the above cause which will be presented to the Hon. B. F. Webber, judge of said court, at the court-house in the city of St. Peter, Nicollet county, said State, on November 22d, 1899, at four o'clock p. m., on said day, or as soon thereafter as counsel can be heard for settlement, allowance and signature.

That at said place upon said case and bill of exceptions, when settled and allowed and immediately after said settlement
17 and allowance defendant on said case and the pleadings in said cause will move said court and the Hon. B. F. Webber, judge thereof, for a new trial on the following grounds, to wit:

1st. That the verdict is not justified by the evidence.

2nd. That the verdict is contrary to law.

3rd. Error in law occurring at the trial and excepted to by the defendant.

Dated November 2d, 1898.

JOHN McKENZIE,
Defendant's Attorney, Lake Benton, Minn.

Complaint.

The plaintiff complains of the defendant, and alleges:

I.

That the defendant now is, and at all of the times hereinafter stated was a corporation duly organized and existing under the laws and regulations of the United States concerning national banks, having its office and principal place of business in the village of Lake Benton, Lincoln county, Minnesota.

II.

The plaintiff further alleges that on the 31st day of December, 1896, at said Lake Benton, the said plaintiff made, executed and delivered to said defendant, his certain promissory note in writing,

being dated on that day, wherein and whereby he promised and agreed to pay said defendant on the first day of July, 1897, the sum of fourteen hundred and eighty dollars ($1,480.00), and which note by its terms bore interest from the date thereof at the rate of ten per cent. per annum, and for the purpose of securing the payment of said note, the said plaintiff at said time of the execution and delivery of the said note, made, executed, acknowledged and delivered to defendant a real-estate mortgage in the ordinary and usual form, wherein
and whereby the said plaintiff bargained, sold, mortgaged
18 and conveyed to the defendant the west half of section five (5), in township one hundred and eight (108), north of range forty-four (44), in Pipestone county, Minn., then owned by plaintiff, and which mortgage was conditioned that upon the payment of said sum of fourteen hundred and eighty dollars, with interest thereon at ten per cent., according to the terms of said note, said mortgage should be void and of no effect, and further conditioned that if default should be made in the payment of said sum, then defendant might sell said premises as provided by law, and the said note and interest to be paid out of the proceeds of the sale of said premises, and also executed and delivered in due form of law, a chattel mortgage on a large number of horses, cattle and hogs, and other personal property then owned and possessed by said plaintiff, which chattel mortgage ran to said defendant and was made to secure the payment of said promissory note, and which chattel mortgage was thereafter on January 5th, 1897, duly filed by said defendant in the town clerk's office of the township of .Etna, in Pipestone county, Minnesota, where said plaintiff then resided, the sole and only consideration for the execution of said note and mortgages being the usurious agreement for the loan of a sum of money for the satisfaction and payment of a certain note and mortgage as is particularly hereinafter set forth, to wit: That on the 26th day of September, 1895, one Wilson Watt was the owner of said described premises, and on that date the said Wilson Watt was indebted to defendant on past-due obligations, amounting in the sum of twelve hundred and eighty dollars ($1,280.00), and on said date the said Wilson Watt executed and delivered to said defendant his promissory note in writing wherein and whereby he promised to pay to said defendant the said twelve hundred and eighty dollars on the first day of November, 1896, with interest at ten per cent. per annum from said September 26th, 1895, and for the purpose of securing the payment of said note,
the said Wilson Watt and wife duly executed and delivered to
19 defendant a mortgage on said real estate in the usual and ordinary form, which mortgage was thereafter and on the 28th day of September, 1895, duly recorded in the office of the register of deeds in and for said Pipestone county, in Book 13 of Mortgages, on page 44 therein, and that thereafter and on the 21st day of November, 1895, the said John W. Watt, this plaintiff, duly purchased said premises of said Wilson Watt for a valuable consideration, and the said Wilson Watt and his wife duly transferred and conveyed said described premises to this plaintiff by warranty deed, dated said November 21st, 1895, and by the terms of which deed the said guar-

antee therein, this plaintiff contracted and agreed to pay to said defendant, the said note and mortgage of twelve hundred and eighty dollars aforesaid, then a lien on said premises as a part of the consideration of the said transfer and sale by said Wilson Watt to this plaintiff.

And plaintiff alleges that on said December 31st, 1896, there was due on said twelve hundred and eighty dollar note and mortgage the sum of twelve hundred and eighty dollars with interest at ten per cent. from September 26th, 1895, amounting at that date to fourteen hundred forty-one and $\frac{77}{100}$ dollars ($1,441.77), and no more, which amount said plaintiff was obliged to pay to said defendant aforesaid, and that in payment and satisfaction of the said amount of fourteen hundred forty-one and $\frac{77}{100}$ dollars, as aforesaid, then due and owing on said note and mortgage of twelve hundred eighty *and* dollars, the said plaintiff made, executed and delivered to said defendant, the said fourteen hundred and eighty dollar note and mortgage before referred to, solely upon the mutual, usurious agreement made between the said defendant and this plaintiff on said December 31st, 1896, at said Lake Benton, that the said defendant should satisfy and discharge said twelve hundred and eighty dollar note and mortgage of record and should accept in lieu thereof the said fourteen hundred and eighty dollar note and mortgages of this plaintiff, and which defendant did, and that this plaintiff should pay a bonus of thirty-eight and $\frac{23}{100}$ dollars ($38.23) for said loan of fourteen hundred forty-one and $\frac{77}{100}$ dollars, or satisfaction of said mortgage over and above the interest at ten per cent. per annum stipulated and contained in said note of said defendant, and that said defendant should take, secure and receive to itself for said loan of fourteen hundred forty-one and $\frac{77}{100}$ dollars, from said December 31st, 1896, to said July 1, 1897, a bonus of thirty-eight and $\frac{23}{100}$ dollars, over and above the interest at ten per cent. per annum so provided for in said note, and a greater sum than ten per cent. per annum, to wit: the sum of five and three-tenths per cent. per annum for the entire time said loan and note were to run, that is to say: that the said plaintiff agreed to pay, and the said defendant agreed to receive the sum of thirty-eight and $\frac{23}{100}$ dollars bonus as extra interest on said loan, or five and three-tenths per cent. per annum for the six months said loan or note was to run, over and above the said rate stipulated in said note as interest for said note, and the said bonus of thirty-eight and $\frac{23}{100}$ dollars was added to said sum of fourteen hundred forty-one and $\frac{77}{100}$ dollars, making the total sum of said note fourteen hundred and eighty dollars as aforesaid, the said defendant thereby actually taking, reserving, receiving and securing to itself for the loan of fourteen hundred forty-one and $\frac{77}{100}$ dollars, the sum of fifteen and three-tenths per cent. per annum for the entire time said note or loan was to run as interest thereon, and that in pursuance of said corrupt and usurious agreement and for the purpose of carrying the same into effect, the said plaintiff executed and delivered to said defendant the said note of fourteen hundred and eighty dollars, and the mortgages securing the same as aforesaid, and the said defendant promised and agreed to satisfy and discharge the said twelve hundred and eighty

dollar note and mortgage of record as aforesaid, and to accept the said fourteen hundred and eighty dollar note and mortgages
21 securing the same in lieu thereof, and the whole of said debt was to be extended until July 1st, 1897, as aforesaid.

And the plaintiff further alleges that on the 23rd day of October, 1897, in pursuance of said usurious contract he paid to the said defendant the said fourteen hundred and eighty dollar note with interest at ten per cent. thereon from the said date thereof to the said date of payment, amounting on said October 23, 1897, to the sum of sixteen hundred three and $\frac{20}{100}$ dollars (1,603.20) which sum was paid by plaintiff to defendant and at the same time the said plaintiff, as a part of said sixteen hundred three and $\frac{20}{100}$ dollars, paid to said defendant the said bonus of thirty-eight and $\frac{23}{100}$ dollars, with interest at ten per cent. from December 31, 1897, as and for interest in excess of and in addition to the legal rate of ten per cent. per annum for the loan and forbearance of said fourteen hundred forty-one and $\frac{77}{100}$ dollars, and the defendant then and there knowingly received and retained said payment of money in excess of and in addition to the highest legal rate of interest, and said defendant then and there marked said note paid and surrendered the same to the plaintiff, and satisfied and discharged said mortgages securing the same.

III.

And the plaintiff alleges that on the 23rd day of October, 1897, he paid to the defendant the sum of one hundred sixteen and $\frac{50}{100}$ dollars, legal interest at the rate of ten per cent. on said note, dated December 31st, 1896, and the sum of forty-five dollars (45.00), as interest or bonus in excess of and in addition to the highest legal rate of interest, and the plaintiff alleges that each and every one of the aforesaid payments were knowingly taken and received by the defendant and retained by it respectively as legal interest, and as interest in excess of and in addition to the highest legal rate of interest.

And the plaintiff further alleges that each of said sums so
22 as aforesaid paid by him to the defendant as interest, legal and illegal, were so paid at the special instance and request of the defendant, and because said defendant insisted upon the payment and each of them being made as aforesaid by plaintiff, and the plaintiff alleges that by virtue of the laws of the United States concerning national banks, an action hath accrued to the plaintiff to sue for and recover of the defendant twice the aforesaid sums of money paid as aforesaid to the defendant by the plaintiff as interest, legal and illegal, on the 23rd day of October, 1897, and each and every of which several sums the defendant knowingly received and retained contrary to the statute in such case made and provided; and the plaintiff further alleges that by force of the statute, the defendant is indebted to the plaintiff in the sum of three hundred and twenty-three dollars ($323.00), with interest from the 23rd day of October, 1897.

Wherefore, the plaintiff demands judgment against the defendant

for the sum of three hundred and twenty-three dollars, being twice the amount of interest paid defendant by plaintiff on the 23rd day of October, 1897, with interest thereon from the said 23rd day of October, 1897, and for the costs and disbursements of this action.

Dated August 9th, 1898.

F. L. JONES,
Plaintiff's Attorney.

Duly verified.

Answer.

For answer to the complaint herein defendant denies each and every allegation — said complaint contained, save only as hereinafter expressly admitted.

Defendant admits that it is a banking corporation and that plaintiff and Wilson Watt made and delivered the notes and mortgages described in said complaint.

23 Wherefore defendant prays that plaintiff recovers nothing in this action, and that it have its costs and disbursements.

Dated September 6th, 1898.

JOHN McKENZIE,
Defendant's Attorney, Lake Benton, Minn.

Duly verified.

EXHIBIT 1.

$1,480.00. LAKE BENTON, MINN., *Dec.* 31, 1896.

July 1st, 1897, after date I promise to pay to the order of the First National Bank of Lake Benton fourteen hundred eighty dollars at the office of the First National Bank of Lake Benton. Value received with interest before and after maturity at the rate of ten per cent. per annum until paid. Interest payable annually. Interest to draw interest at the rate of ten per cent. if not paid when due.

JOHN W. WATT.

EXHIBIT 4.

$1,280.00. LAKE BENTON, MINN., *Sept. 26th*, 1895.

November 1st, 1896, after date I promise to pay to the order of the First National Bank of Lake Benton twelve hundred eighty dollars at the office of the First National Bank of Lake Benton. Value received with interest before and after maturity at the rate of ten per cent. per annum until paid. Interest payable annually. Interest to draw interest at the rate of ten per cent. if not paid when due.

WILSON WATT.
C. S. WATT.

EXHIBIT 6.

FIRST NATIONAL BANK OF LAKE BENTON,
LAKE BENTON, MINN., *October 6th*, 1897.

Will Watt, Ruthton, Minn.

DEAR SIR: We are in receipt of a letter today from Mr. Creglow. He does not appear to understand this land deal between
24 ourselves and you. I sent him a statement on the 18th of Sept. showing the amount due on that date to be $1,620.60. It will be necessary for you either to come up here at once or else write him stating that our account of the amount due on the mortgage is correct and ask him to pay us at once. We have been waiting quite a while for this matter to be fixed up and wish you to attend to it immediately. The amount due at present is $1,622.00. Will you kindly drop a line to Mr. Creglow stating that that amount is correct and send us a draft for it. You had better come up as soon as you can and we will figure the matter over.

Yours truly, J. B. SULLIVAN, *Cashier.*

(Dictated.)

EXHIBIT 7.

RUTHTON, MINN., 2, 25.

First nat'l bank, Lake Benton, Minn.:

Please send me the old note and mortgage and oblige.

J. W. WATT.

LAKE BENTON, MINN., *Feb. 27th*, 1897.

DEAR SIR: I have not been over to Pipestone yet and cannot deliver old papers until I find everything straight.

Yours truly, J. B. SULLIVAN, *Cashier.*

EXHIBIT 8.

Prin.	1,480
Int. to due	74
	$1,554
Int. to date	49.20
	1,603.20

EXHIBIT 9.

This indenture, made this 21st day of November in the year of our Lord one thousand eight hundred and ninety-five, be-
25 tween Wilson Watt and Catharine S. Watt, his wife, parties of the first part, and John William Watt, party of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of one dollar, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged,

do hereby grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, all that tract and parcel of land lying and being in the county of Pipestone and State of Minnesota, described as follows, to wit: The west one-half (W. ½) of section five (5) in township one hundred and eight (108) north of range forty-four (44) west of 5th P. M.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part his heirs and assigns forever. And the said Wilson Watt and Catherine S. Watt, his wife, parties of the first part, for themselves or their heirs, executors and administrators, do covenant with the said party of the second part, their heirs and assigns, that they are well seized in fee of the lands and premises aforesaid, and have good right to sell and convey the same in manner and form aforesaid; that the same are free from all incumbrances; except mortgages amounting to about $3,700.00, which second party is to pay, and the above bargained and granted lands and premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said parties of the first part will warrant and defend.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

WILSON WATT.
CATH-RINE S. WATT.

Signed, sealed and delivered in presence of—
P. P. CADY.
FRANK E. MILLARD.

26 STATE OF MINNESOTA, }
Pipestone County, } ss:

I, P. P. Cady, a notary public within and for said county, do hereby certify that on this 21st day of November, A. D. 1895, personally came before me Wilson Watt and Catharine S. Watt, his wife, to me well known as the same persons described in and who executed the foregoing deed, and they acknowledged that they executed the same freely and voluntarily.

P. P. CADY,
Notary Public.

Transcript.

STATE OF MINNESOTA, }
County of Lincoln. }

District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Defendant.

This case came duly on for trial and determination before the Hon. B. F. Webber, judge, with a jury, at the regular October 1898

term of said district court, held in and for the county of Lincoln, at the village of Lake Benton, this 19th day of October, 1898.

F. L. Janes, Esq., appearing as attorney for the plaintiff.

John McKenzie, Esq., appearing as attorney for the defendant.

Jury duly empanelled and sworn at 3.45 p. m.

Mr. Janes opens *opens* the case to the jury.

J. B. SULLIVAN called for cross-examination under the statute. Duly sworn.

Cross-examination by Mr. JANES:

Q. What is your name, Mr. Sullivan, initials?

A. J. B. Sullivan.

Q. What is your business?

A. Cashier of the First national bank of this town.

Q. Of Lake Benton, the defendant in this action?

27 A. Yes sir.

Q. Where is your place of business?

A. It is at Lake Benton.

Q. That has been its place of business since the organization of the bank, has it?

A. What is that?

Q. That has been its place of business since the organization of the bank?

A. Yes sir.

Q. How long have you been cashier of that bank?

A. Since January, '97; January 1st; about January 1st, '97.

Q. About January 1st, '97?

A. Yes.

Q. What position did you occupy before that time?

A. I didn't have any position; I was simply assistant in the bank.

Q. Were you the cashier?

A. No sir.

Q. You have had charge of a portion of the business there, did you?

A. I assisted since June previous.

Q. What is that?

A. I assisted in the bank since the June previous.

Q. Who was the cashier at that time?

A. John S. Tucker.

Q. You transacted the business for the bank at that time; some business?

A. I did some business, I had no supervision at all.

Q. What business you did you did under the supervision of Mr. Tucker, then?

A. Yes.

Q. And what business you did do was ratified by Mr. Tucker, wasn't it?

A. There wasn't anything said particularly, or done.

Q. He knew of what you did?

A. I don't know; I think so.

28 Q. He looked over your work at different times, didn't he? Looked into the loans you had made? Just answer yes or no?

A. Well, I don't know that he did look into all loans.

Q. He did into some?

A. Yes sir.

Q. You talked over with him the business at times that you had done?

A. Yes.

Q. You know the plaintiff here, John Watt?

A. Yes sir.

Q. Do you remember having a business transaction with him on behalf of the bank in December, on December 31st, 1896?

A. How is that?

Q. On December 31st, 1896?

A. '96, with this man here?

Q. Yes sir.

A. Why, I don't really know whether that was the date.

Q. Do you ever remember of having business transaction with him?

A. I had some transaction with him, but I don't remember just exactly now what the date was.

Q. Do you remember what conversation was had between you and him regarding that transaction?

A. Which transaction?

Q. Regarding the loan on some land in Pipestone county.

A. Yes.

Q. Note marked Ex. "12" ("1"); look at Ex. "1" and tell me if that is in your handwriting?

A. Yes sir, I think it is.

Q. Don't you know it is your handwriting?

A. Why, I believe it is.

Q. Don't you know it as a fact?

A. Why, I have no reason to doubt it.

Q. Will you swear it isn't your handwriting?

29 A. No sir.

Q. Will you swear it is your handwriting?

A. I rather swear it is than it is not.

Q. It is your impression then it is your handwriting, is it?

A. Yes sir.

Q. Do you know what that is on there, that stamp on Ex. "1"?

A. In what way do you mean? What it reads?

Q. Yes.

A. (Examines exhibit.) First National Bank, Lake Benton, Minn., paid October 23rd 1897.

Q. Is that the stamp that was placed on the note at the time it was paid by the bank; stamped?

A. I think so.

Q. Is that the stamp that is used by your bank in cancelling notes when they was paid?

A. Yes sir; supposed to be the stamp.
Q. Then that note was paid at the time it appears to be stamped?
A. I presume so; unless there was something wrong with the date in the stamp, but I don't think so.

Mr. JANES: We offer in evidence Ex. "1" as part of the case.
No objection.

Q. Now, Mr. Sullivan, at the time that Ex. "1" was made by you the plaintiff here signed it, did he?
A. Which, this note that you showed me?
Q. Yes.
A. I think he did.
Q. Don't you know he did?
A. If that is the same paper, or supposed to be, he did.
Q. Haven't you a good memory, Mr. Sullivan?
A. Pretty fair.
Q. Are you in any doubt as to the fact that that is the signature of the plaintiff here?
A. No sir; I am not.
Q. You have no doubt about it?
A. No.
Q. At the time that the plaintiff signed that did he give you a real-estate mortgage on some land in Pipestone county?

Objected to as irrelevant and immaterial.
Mr. JANES: I think it is part of the *res gestæ*.
By the COURT: What is the purpose of it?
Mr. JANES: The purpose of it is to show that there was a general transaction by which this note was given and the security that was given at the same time.
By the COURT: If he has taken a note and the usury is included in the note and it has been paid, I don't see how the security given would be material.
Mr. JANES: Not material except in so far as the transaction is concerned. I don't think I need to inquire of the witness relative to this because it is admitted by the pleadings that these notes were given.
By the COURT: It seems to me that the mortgage would only encumber the record and not add anything to the case. He admits the execution of the note.
Mr. JANES: I think, perhaps, that they admit the execution of the mortgage. I just want to identify these.
By the COURT: You can identify them.

Q. Look at Exhibits "2" and "3."
By the COURT: One real estate and the other chattel mortgage.
Q. Yes sir. Look at Ex. "2," is that in your writing?
A. I think it is.
Q. Don't you know it is?
A. I know it just as much as I can know.
Q. Well, in fact you know it?
A. Well, I presume it was; rather swear it was than it was not.

Q. Look at Ex. "3," is that in your handwriting?

A. I think so; the same as the other. Let me examine the other again.

Q. These Ex. "2" and "3" were signed by the defendant in your presence, were they not?

31 A. Yes sir.

Q. And the note that is described in Ex. "2" and "3" is Ex. "1," is it not?

A. That is the same, yes.

Q. Then, Mr. Sullivan, on December 31st, 1896, you did meet the plaintiff, did you not, in the bank here, in the First national bank?

A. Yes sir.

Q. At that time the plaintiff came to you, or to your bank and stated to you that he desired to give additional security and get an extension on the provisions of the mortgage of $1,280 which your bank held on the real estate described in the complaint, did he not?

A. I don't think so.

Q. Will you swear that he didn't say so?

A. Repeat your question once more.

Q. Read the question.

Question read.

A. The note described in the complaint is what? The note of his father's?

Q. Yes.

A. I don't think that he stated he wanted to give any additional security.

Q. He told you that he wanted—the plaintiff told you at that time that he could not pay that note of his father's, didn't he?

Mr. McKENZIE: These questions are leading.

By the COURT: It is cross-examination; it is proper on cross-examination.

Q. Read the question.

Question read.

A. Well, I don't know whether he—I don't remember that he stated that he couldn't pay it.

Q. He told you at that time that he had a deed of the land that secured it? That you had security on for the father's note, did he not?

A. I think he told me that he had bought his father's farm.

32 Q. You knew it was the land on which the bank had security for the loan made to the father of the plaintiff, did you not?

A. I presume it was the same piece.

Q. Look at Ex. "4."

(Examines exhibit.)

Q. Is that the note referred to as being the indebtedness by the

father of the plaintiff, Wilson Watt, to the defendant in this action?
A. I think it is.
Q. Marked Ex. "5." Look at Ex. "5;" is that the mortgage on the real estate described in the complaint securing Ex. "4"?
A. I don't remember the description of the land at present.
Q. You can see whether it is the security for Ex. "4"?
A. Appears to be.

Mr. McKENZIE: Object, your honor, to this inquiry on the ground that it is irrelevant and immaterial.
Objection overruled.

Q. Do you know personally, Mr. Sullivan, anything about this loan made to Wilson Watt, the father of the plaintiff, for which Ex. "4," the $1,280 was given?
A. Let me have the question once more.

Question read.

A. I know nothing, except what I see there.
Q. This note—when you went into the bank in '96 this note and mortgage securing it were in the bank, were they not?
A. I think they were.
Q. What is it?
A. I think they were.
Q. On the 31st day of December, '96, at the time you say the plaintiff came to the bank, it was regarding this $1,280 note, was it not, that he talked with you there that day, Ex. "4"?
A. No, he come on his own personal business.
33 Q. Didn't he talk with you a while there about Ex. "4"?
A. He told me——
Q. Answer the question, yes or no?
A. How is that?
Q. Answer the question, please. Read the question.

(Question read.)

A. Yes, he did.
Q. Didn't he tell you at that time that he would give the bank, the defendant here a note and mortgage on that land that he got of his father, the same land that you then had security on, described and securing Exhibit "4," and get time until the following July?
A. No, sir, that wasn't the conversation.
Q. You didn't have any such conversation with the plaintiff?
A. Not just as you state.
Q. At that time you did take a $1,480 note in lieu of the $1,280 note, Ex. "4," did you not?
A. I think I did.
Q. Did you compute the interest on December 31st on Ex. "4" and tell the plaintiff how much was then due thereon?
A. I think I did.

Mr. JANES: We offer Ex. "4" in evidence.
No objection.

Q. Do you now know the amount that you found due on this $1,280 note at that time?

A. Not that I remember.

Q. You don't remember?

A. No.

Q. Can you tell this jury how much was due on this note on that day? Figure it out?

A. I think I can't figure up here what I charged him.

Q. You can't figure up here what you charged him?

A. No, I don't remember.

Q. You don't remember that you can?

A. No.

34 Q. Didn't you agree with—on behalf of the defendant, the bank, to satisfy and discharge of record the mortgage securing Ex. "4," the $1,280 note, when you had the mortgage, Ex.—mortgages Exhibits "2" and "3" recorded and filed respectfully?

A. That I would release——

Q. Read the question.

Question read.

Mr. McKenzie: The defendant objects to that on the groud that it is incompetent, irrelevant and immaterial.

Objection overruled. Exception by defendant.

Q. Answer the question, yes or no, Mr. Sullivan. Read the question again.

Question read.

A. I don't know whether I talked with him about satisfying them or not.

Q. You don't remember whether you did or not?

A. No.

Q. Do you remember of the plaintiff coming to the bank on the 23rd day of October, 1897, and paying to you as cashier of the bank $1,603.20 in payment of the $1,480 note?

A. He came to the bank and——

Q. Answer the question, yes or no?

A. I can't answer it yes or no on account of the date. I presume it is the same date.

Q. Look at the note?

A. Yes sir; I remember being there.

Q. Read the previous question.

Question read.

By the Court: That is Ex. "1"?

Q. Ex. "1;" only one $1,480 note. What was your answer to that, yes or no?

A. Well, I intend to answer yes, then; barring the date, I don't remember, but from the looks of the paper I would say yes.

Q. You would say it was on October 23rd, 1897?

A. Yes.

Q. And that is the amount he paid you?

A. I can't just exactly remember that; he paid me whatever was due on it.

Q. $1,603.20?

35 A. Sixteen hundred dollars and something.

Q. At that time you stamped the $1,480 note "paid" and gave it to the plaintiff, did you not, Mr. Sullivan?

A. I think I did.

Q. Now then, Mr. Sullivan, this note, $1,480, was entered upon your books in the books of "bills receivable," was it not?

A. Yes sir, "bills receivable."

Q. That is the number of it?

A. Yes sir, that is the number of it that was entered.

Q. And the transaction was carried through the bank books, this transaction?

A. Yes sir.

Q. Now then, Mr. Sullivan, on the 31st day of December, 1896, when the plaintiff was in the bank, in the defendant's bank and talking with you, and at the time he gave you this $1,480 note, being Ex. "1," didn't you state to the plaintiff that you would extend, or extend this loan to the plaintiff on behalf of the bank until July 1st, 1897, but that the bank for carrying it would want a sum of money over and above ten per cent. interest?

A. No sir.

Q. Didn't you at that time figure up on a piece of paper the amount due on Ex. "4" and state to the plaintiff that you would carry, make a new loan to him and carry it to July 1st, 1897, if he would pay you on behalf of the bank the amount which you marked there, which was something between twenty and forty dollars, that you marked on the paper there?

A. I would charge him?

Q. Yes sir.

A. No sir.

Q. You did not?

A. No sir.

Q. Why do you remember that?

A. Why, I have—I have a recollection of the talk with him.

36 Q. Yes; now then, you have had since that time charge of the bank, the management of the bank in person?

A. Yes, sir.

Q. How many notes have you had charge of and handled since that date, belonging to that bank?

A. Don't know.

Q. Can you state to the jury an estimate of them in number? A thousand?

A. Why, I don't really know.

Q. More than a thousand?

A. Why, I should judge there were. Just up to what date do you mean?

Q. I mean from December 31st, '96, up until the present time?

A. Yes, a thousand, probably.

Q. And during that period you have had at least a thousand

transactions with at least a thousand different men regarding these thousand different notes, Mr. Sullivan?

A. I believe so, yes.

Q. Now, you don't wish to state here that you remember distinctly each transaction of those thousand different notes with those thousand different men, do you?

A. No, sir.

Q. Letter marked Ex. "6." Did you write that Ex. "6"?

Letter shown witness and examines the same.

A. I think I did.

Q. Don't you know you did? That is your signature to it, isn't it?

A. Yes, sir.

Q. What is the amount that you state that was due there on that $1,480 note on September 18th, 1897?

Objected to as irrelevant and immaterial.

Objection overruled.

Q. What is the amount that you state is due on that note?

A. It states in the letter $1,622.

Q. $1,620?

37 A. $1,622.

Q. $1,622, yes. What note do you refer to there, Mr. Sullivan? You refer to the $1,480 note, Ex. "1"?

A. I presume so.

Q. That letter, Ex. "6," you mailed, you wrote and mailed to the plaintiff here in this action, did you not?

A. It appears so.

Q. Well, isn't it a fact that you did?

A. I don't know that I mailed it or not; I signed the letter.

Q. Well, that is directed to him, is it? Addressed to whom? Headed what?

A. Will Watt.

Q. Do you mean by that the plaintiff here?

A. Yes, this man here.

By the COURT: What is the date of the letter?

Mr. JANES: October 6th, 1897.

By the COURT: When was the payment made?

Mr. JANES: October 23rd, 1897.

Q. Letter marked Ex. "7." Look at Ex. "7."

A. What do you have reference to?

Q. Did you ever see Ex. "7" before?

A. This here?

Q. Yes, sir.

A. Probably not since I wrote it.

Q. You wrote that, did you?

A. I don't know that I did.

Q. Why do you say "not since I wrote it"?

A. Well, I presume I wrote it, but I don't know.

Q. Well, isn't it a fact that you do know that you wrote that letter, in answer to the one on it?

A. I might have instructed it to be written.

Q. You fathered the transaction then, didn't you?

A. H'm?

Q. You fathered the transaction, then, didn't you? The writing of Ex. "7;" I mean that typewritten part?

A. I presume that is mine.

Q. What papers in that Ex. "7" do you refer to when you
38 say "I have not been over to Pipestone yet and can't deliver old papers until I find everything straight"? What papers do you refer to?

A. I don't know.

Q. Don't you refer to the $1,280 note and the mortgage accompanying it?

A. I don't know that I did.

Q. Will you swear that you did not refer to them?

A. No.

Q. You will not?

A. No.

Q. Referring to Ex. "7" again, do you remember of having received that upper part of that letter, the part that is written in ink?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Then this in typewriting is in answer to that which is written in pen above there?

A. It appears to be.

Q. Isn't that the fact, that you so intended it?

A. I presume I did.

Q. You presume you did?

A. Yes.

Q. Your memory isn't very clear about this transaction and about the details of it, is it, Mr. Sullivan?

A. Not in some parts of it.

Q. Look at Ex. "8" and tell me if those figures in pencil enclosed within the pen line are your figures?

A. No, sir.

Q. What is it?

A. No, sir.

Q. They are not your figures?

A. I don't think they are.

Q. What is it?

A. I don't think they are.

Q. Will you swear they are not your figures, made by you?

A. Well I don't—I don't remember making them; they don't appear like my figures.

39 Q. Then you wouldn't say they are not your figures and you would not say they are your figures?

A. I couldn't tell that.

Q. You can't hardly swear either way. Mr. Sullivan, don't you know your signature when you see it; signature written by you?
A. Generally.
Q. Don't you always?
A. Yes; always.
Q. What is it?
A. Always, I don't know.
Q. As cashier of the bank don't you know your own signature?
A. I presume I know it.
Q. You presume you know it; you are not really certain of that?
A. I don't swear I would know it every time; might possibly not know it.
Q. And you don't know your own figures even?
A. Swear that I know my own figures?
Q. Yes?
A. No, I wouldn't swear I know my own figures always.

Witness excused.

JOHN W. WATT, sworn in his own behalf.

Direct examination by Mr. JANES:

Q. You are the plaintiff in this action, are you?
A. Yes, sir.
Q. Do you know where section 5, township 108,—the west half of section 5, township 108,—range 45 in Pipestone county is?
A. Yes, sir.
Q. Did you buy that land in 1896, or '95?
A. I think that is the year.
Q. Who did you get it from?
A. From my father.
Q. From your father?
A. Yes.
Q. What is your father's name?
A. Wilson Watt.
Q. Did he give you a deed at the time you bought it?
A. Yes, sir.
Q. Have you that deed?
A. Yes, sir.
Q. Produce it.

Witness produces deed.

Q. Marked Ex. "9." Is Ex. "9" the deed that you refer to as having received from your father?
A. Yes, sir.

Mr. JANES: We offer this deed in evidence.
Objected to on the ground that it is irrelevant and immaterial.
By the COURT: For what purpose?
Mr. JANES: For the purpose that it contains the allegation that the plaintiff in this action, the grantee in the deed, agrees to and

assumes to pay the indebtedness to the First national bank, secured on this land.

Objection overruled.

Q. Now, this deed contains this clause, "that it is free from all incumbrances except mortgages amounting to about thirty-three hundred dollars which the second party"—is the plaintiff; the plaintiff in this action is the second party. What mortgages does that refer to, Mr. Watt? "Second party assumes to pay"?

A. The twenty-five-hundred-dollar mortgage given by father to the Colonial and United States Mortgage Company and one $1,280 loan given to the Bank of Lake Benton.

Q. Given to the First National Bank of Lake Benton?

A. Yes.

Q. Now, this deed, I notice, bears date the 21st of November, '95; did you subsequent to that time notify in any manner the First National Bank of Lake Benton that you was the owner of the land described in this deed and included in it the $1,280 mortgage?

A. Yes, sir.

Q. With whom did you have any conversation regarding this matter, Mr. Watt?

A. Mr. Sullivan.

Q. This gentleman?

A. Yes, sir.

Q. When was that and where?

A. It was at the bank at Lake Benton, but I can't tell the date exactly.

41 Q. Was it before December 31st, '96, or on that date?

A. — think it was before that date.

Q. What talk, if any, did you have with Mr. Sullivan regarding that $1,280 note and mortgage?

A. Why, I wanted him to carry it over and me give my note in place of father's.

Q. In the place of the $1,280 note?

A. Yes sir.

Q. What did he say?

A. Well, he said first he could not and then he said he would, providing—I don't remember just the exact words.

Q. Well, when are you referring to the conversation, the date that you gave the $1,480 note?

A. Well, I can't tell whether that was the exact date or not.

Q. Did Mr. Sullivan say anything to you at that time about wanting additional security, or you give additional security to the bank other than the real-estate security?

A. Yes sir.

Q. What did you tell him, if anything?

Objected to as irrelevant and immaterial, as to additional security.

By the COURT: What is the purpose?

Mr. JANES: Well, perhaps it isn't very material. If it please the court, it is a part of this transaction and I presume it is admissable for that reason: We have a right to show what the transaction was;

usurious transactions are not usually put in writing and no publicity put to them, if possible.

Objection sustained.

Q. Now then, you remember of giving the defendant here Ex. "I"?

A. Yes sir.

Q. I notice the date is December 31st, '96?

A. Yes sir.

Q. Now, what did you give that to them, to the First national bank for?

42 A. Why, that paid the $1,280 note and mortgage, the one given by my father.

Q. Referred to as Ex. "4" here?

A. Yes sir.

Q. With whom did you do this business?

A. Mr. Sullivan.

Q. This gentleman here?

A. Yes sir.

Q. Was he the man that appeared to be in charge of the bank there?

A. Yes sir.

Q. Where was it?

A. Why, here in Lake Benton.

Q. What conversation did you have with Mr. Sullivan regarding the giving of this $1,480 note in lieu of the $1,280 note? State it as nearly as you can?

A. Why, he figured up the bonus on the note that I was to give and I said that I didn't want to give it and he said he would have to foreclose and finally I did give him the $1,480 note.

Q. He figured the bonus, you say?

A. Yes sir.

Q. Do you remember how much the bonus was that was figured in?

A. No sir, not the exact amount.

Q. Well, about how much was it, as nearly as you can remember?

A. Well, somewhere between twenty and thirty—thirty-five dollars.

Q. Between twenty and thirty-five dollars?

A. Yes sir.

Q. Now, what was the exact transaction, as to how he did this or what he said at the time?

A. Why, I wanted the note at ten per cent. and he said he wasn't loaning money that way and I gave him—he figured out—didn't figure out the exact per cent., he figured out on a piece of paper and he said he would have to have so much.

Q. In addition to the ten per cent., did he say?

A. Yes sir.

43 Q. Did he say to you the number of dollars he wanted in addition to the ten per cent., or did he point to it, to some figures on a piece of paper?

A. He pointed to some figures on a piece of paper.

Q. And that amount was included in the $1,480 note?
A. Yes sir.
Q. Now then, did you ever pay the $1,480 note?
A. Yes sir.
Q. When?
A. October 23rd, 1897.
Q. To whom did you pay it?
A. Mr. Sullivan.
Q. This gentleman here?
A. Yes sir.
Q. How much did you pay him?
A. $1,603.20.
Q. $1,603.20; did he give you then Ex. "1," the $1,480 note?
A. Yes sir.
Q. Did he put this stamp upon it at that time?
A. Yes sir.
Q. Now, when you gave Mr. Sullivan, or the First national bank this Ex. "1," did you give any mortgage securing it?
A. Yes sir.
Q. I would ask you to look at Ex. "2" and "3" and state if these are the mortgages that you at that time signed and executed and gave to Mr. Sullivan securing that $1,480 note?

Objected to as irrelevant and immaterial.
By the COURT: Let him answer that by yes or no; it certainly doesn't prejudice anybody.

Q. Just yes or no.
A. Yes sir.
Q. What, if anything, did Mr. Sullivan say to you regarding the satisfaction of the $1,280 note and mortgage?

Objected to as irrelevant and immaterial.
Overruled.

Q. Read the question.

Question read.

44 A. I called for the twelve hundred——
Q. No; at the time you gave the $1,480 note, on December 31st, what did Mr. Sullivan say to you about giving up or satisfying this $1,280 note and mortgage?
A. He said he would give it up as soon as he had been to Pipestone and seen that everything was all right and get the other recorded.
Q. Then I understand you gave this $1,480 note in lieu of the $1,280 note?
A. Yes sir.
Q. Now, at the time he figured up that bonus of twenty to thirty-five dollars, did you know that it was put into the $1,480 note?
A. Yes sir.
Q. Did you at that time agree to pay it to the bank as a part of the transaction?

A. Yes sir.
Q. And did you pay it?
A. Yes sir.
Q. On October 23rd, '97; and who did you say you paid it to? Mr. Sullivan?
A. Mr. Sullivan.
Q. Now then, after you gave the $1,480 note, did you have any talk with Mr. Sullivan about its payment and the amount there was due thereon, etc.? I am speaking now about the $1,480 note?
A. What was the question, please?
Q. Read the question.

Question read.

A. Yes sir.
Q. I will show you Ex. "6;" did you ever see that before?
A. Yes sir.
Q. Where did you—how did you get that?
A. Sent to me by Mr. Sullivan.
Q. Where did you receive it? Where?
A. In Ruthton.
Q. Where in Ruthton?
A. Post-office.
Q. Directed to you, was it?
A. Yes sir.
45 Q. In an envelope?
A. Yes, sir.
Q. And have you had a talk a short time before that regarding this $1,480 note?
A. I think I had; yes.
Q. What was the amount he stated to you at that time was due on that $1,480 note?
A. It was over $1,620; I can't state exactly now how much it was.
Q. I will show you Ex. "7;" did you ever see that before?
A. Yes sir.
Q. Is that that is written in ink and pen, is that in your handwriting?
A. Yes sir.
Q. What did you do with it after you had written it?
A. Mailed it to the bank—First national bank.
Q. Of Lake Benton, here?
A. Yes sir.
Q. What do you refer to there in that letter?
A. Referred to the $1,280 note and mortgage.
Q. Referred to the $1,280 note and mortgage?
A. Yes sir.
Q. Did you receive this again, Ex. "7?"
A. Yes sir.
Q. How did you receive it?
A. Received it the same as the other, in the post-office.
Q. In the post-office?
A. Yes.

Q. At about the date it bears?
A. Yes sir.

Mr. JANES: We offer Ex. "7" in evidence and Ex. "6" in evidence. Ex. "6," make the offer only.

Objected to on the ground that it is incompetent, irrelevant and immaterial.

Objection overruled.

Mr. JANES: We offer Ex. "7" in evidence.

Mr. McKENZIE: Same objection to No. 7.

Objection overruled.

46 Mr. JANES: I will read both exhibits to the jury.

Q. What does that mean, "Mr. Creglow;" what does that mean?
A. He is the man I sold the land to.
By the COURT: He is what?
A. He is the man I sold the land to.
Q. The purchaser of the farm?
A. Yes sir.
Q. Now, Mr. Watt, when you went to pay this mortgage, this $1,480 note and mortgage, how much did Mr. Sullivan state to you was due on it?
A. Something like—over $1,620.
Q. Over $1,620?
A. Yes sir.
Q. What did you say, if anything, to him?
A. I said it wasn't right.
Q. Did he then again make any figures, or make any different estimate of the amount due on that note and mortgage.
A. No sir; he said he would have to have that.
Q. He said he would have to have that?
A. Yes.
Q. Did he figure it up at that time when you paid it? You received the paper on which these figures are?
A. He figured it up and I wanted him to give me the paper and he wouldn't give me the paper, and I told him to give me the figures and he gave me this.
Q. Is that the one he figured up the $1,620 odd dollars to be due on it?
A. This paper?
Q. Yes?
A. No sir.
Q. Did you see Mr. Sullivan make those figures there inclosed within the circle of ink there?
A. Yes sir.
Q. What do they refer to?
A. What he wanted for the note; what he was willing to take for the $1,480 note.

Mr. JANES: We will offer that in evidence, just that part enclosed in the ink lines.

47 Objected to as incompetent, irrelevant and immaterial.

Objection overruled.

Exception by defendant.

Mr. McKENZIE: I would like to have an exception to the ruling on the introduction of the letters, too, your honor.

By the COURT: You can have them.

Q. Is this the amount that you paid him at that time then?

A. Yes sir.

Q. Now, Mr. Watt, regarding the amount that was figured as being due by Mr. Sullivan on this $1,280 note at the time that you gave the $1,480 note; what interest did Mr. Sullivan figure on that or tell you he was figuring on that note?

A. At the time it was due, you mean?

Q. From the time it was due, yes; November 6th, '96?

A. Ten per cent. up to the time it was due.

Q. He figured ten per cent. up to the time it was due?

A. Yes sir.

Q. Did you see the figures?

A. Yes sir.

Q. Did he tell you that it was what he was figuring?

A. No, he didn't say anything about it.

Q. Did he say anything at that time to you about your father having paid him or the bank any bonus for carrying it up until its due date?

A. Yes sir.

Objected to as irrelevant and immaterial.

By the COURT: Hardly seems to me that is proper, Mr. Janes.

Mr. JANES: I will withdraw the question, if the court please. Now, as to the rate of interest that he figured from November 1st, 1896, up until December 31st, 1896, at what rate did he figure this note?

A. He figured up to September 26th at ten per cent. and
48 I can't say the exact amount from that until December 31st, but it was more than ten per cent.

Mr. McKENZIE: What note is that?

Q. The $1,280 note. On that amount that he figured it up it was more than ten per cent.?

A. Yes sir.

Q. And that you say he figured up on this note that was due was how much less than the $1,480?

A. Between twenty and forty dollars.

By the COURT: At the time that you gave that new note, did he tell you how much was due on the old note?

A. Yes sir.

By the COURT: You remember how much he told you was due on the old note?

A. No sir, not the exact amount.

Mr. JANES: He says he don't remember exactly what it was, but it was somewhere between twenty and forty dollars. That is what he told you, is it?

A. Yes sir.

Q. Did he show you the figures at the same time, Mr. Watt?
A. Showed me the figures what was due, yes sir.

Cross-examination by Mr. McKENZIE:

Q. Mr. Watt, when you had this talk with Mr. Sullivan at the time you made the $1,480 note, you say you don't remember just what Mr. Sullivan stated the amount to be due on the $1,280 note?
A. No sir.
Q. Don't remember what he said about that, is that right?
A. I don't remember the exact words.
Q. Or the amount either?
A. No, not exactly.
Q. That he stated was due. Did he figure up, make some figures and then tell you that that was the amount due on the note and you would have to pay it?
A. He said that is what he would have to have for the settlement of the $1,280 note to carry it over.
49 Q. Would have to have that much in settlement of the $1,280 note?
A. $1,480, yes sir.
Q. If you have to pay it in cash? Was there any talk at that time about you paying the note?
A. Nothing, only I told him I couldn't pay it.
Q. Did you say something to him about paying the note at that time in cash?
A. I don't remember anything being said; unless I sold the farm, then I would pay him; if I could sell it in a certain time.
Q. Then he told you if you would give a note for $1,480, that he would, or make out this note for $1,480 to July 1st, 1897, he would take it in lieu of this $1,280 note, did he?
A. Yes sir.
Q. Now then, when he figured up the amount due on the $1,280 note, didn't he tell you there was $1,480 due on the note?
A. No sir.
Q. He did not?
A. No sir.
Q. You are positive of that?
A. Yes sir.
Q. And didn't he tell you it would take $1,480 to pay up that note, the $1,280 note?
A. I don't remember of him saying that.
Q. You don't remember?
A. No.
Mr. JANES: You say he didn't tell you that there was $1,480 due on that $1,280 note?
A. No sir.
Mr. JANES: If he had told you so you would have remembered it, would you?
A. Yes sir, I would.

Q. Well, didn't he show you the figures then, $1,480, and tell you that was the amount that it would take to settle the $1,280 note?

A. I don't remember that he showed me some figures at
50 that time; but he said it would take that to settle; he said he would have to have a note for that much.

Q. He said he would have to have a note for that much to settle the note of $1,280?

A. Yes sir.

Redirect examination by Mr. JANES:

Q. Didn't he say at the same time "to settle it and carry it until July 1st, 1897?"

A. He would have to have that to carry.

Q. $1,480 to carry it?

A. Yes sir.

Q. He didn't claim to you that there was $1,480 due on that $1,280 note on December 31st, 1896, did he?

A. No sir.

Witness excused.

Mr. JANES: We offer as part of this case the three mortgages, two real-estate mortgages and one chattel mortgage, being Ex. "2," "3," and "5." Those are the ones that were identified and marked as exhibits. The one marked Ex. "5" is the one that secures the $1,280 note and the other two are the ones that secure the $1,480 note.

Objected to on the ground that they are incompetent, irrelevant and immaterial.

Objection sustained.

Exception by plaintiff.

Plaintiff rests.

Mr. McKenzie opens the case to the jury.

J. B. SULLIVAN, recalled for the defendant.

Direct examination by Mr. MCKENZIE:

Q. Mr. Sullivan, I believe you have stated that you are the cashier of the First National Bank of Lake Benton?

A. Yes sir.

51 Q. And were at the time the $1,480 note, introduced in evidence, was taken?

A. Just give the date.

Q. That was December 1st, 1896?

A. No, I don't believe I was in '96, December 31st.

Q. That is Ex. "1," just look at that?

A. I don't think I was cashier at that time; I was merely assistant.

Q. Well, do you remember seeing the plaintiff in the First National Bank of Lake Benton on or about December 31st, 1896?

A. Yes, on or about that date.

Q. And Ex. "1" is in your handwriting?
A. I think it is, yes.
Q. Now, the transaction with reference to that $1,480 note, was that had between you and Mr. Watt?
A. Was the conversation between——
Q. The conversation and transaction?
A. I think it was.
Q. Now, if you remember that conversation, what Mr. Watt said to you when he came there that day?
A. No, I can't tell you the whole conversation.
Q. You can't tell the whole conversation?
A. No.
Q. Well, do you remember what he said about his old note, the note of $1,280, what he wanted to do with that?
A. Well, part of the conversation and——
Q. Just as near as you remember it, tell it.
A. He stated during the conversation that he had bought the place from his father and we had a talk about him paying the debt up in full——
Q. Yes.
A. And I think we talked about—I don't know whether it was that time or not, now—it seems to me—I think it was the same time, he talked about hiring the money at Pipestone——
Q. Well——
52 A. And he said that he was figuring on selling the farm, I think, or part of the farm, and couldn't do it just then, but he said he thought he had a prospective customer who would come around some time, and he wanted to fix the matter up; these matters, so that he would be in condition to sell his farm and pay us up.
By the COURT: That was on the 31st day of December this conversation occurred?
A. The date of the note; the date of the first transaction between Mr. Watt and I.
By the COURT: Was that the date the note of $1,480 was given?
A. Yes, sir.
Q. Did you at that time figure up the amount due on the $1,280 note, Ex. "4?"
A. That is the Wilson Watt note?
Q. Wilson Watt to the First national bank?
A. I think I did.
Q. And did you tell him what was due on it at that time?
A. As near as I can—state or remember, he asked me what amount—what amount was due; I think he asked me what amount was due on his father's claim; or what amount he would have to pay to settle his father's claim, and I told him the amount.
Q. You computed it for him, did you?
A. I told him the amount.
Q. What amount did you tell him at that time?
A. The amount I told him was the amount of the new note.
Q. Yes; $1,480?

A. If that is the amount it is——

Q. Shown note.

A. Yes; whatever the new note was; I told him that was the amount necessary for him to give a note for in order to pay up the old claim; or settle the old claim; that was about the words I used, "to settle the old claim."

53 Q. When you took this $1,480 note from Mr. Watt, the plaintiff in this action, did you tell him that the amount due on the $1,280 note was less than $1,480?

A. No sir.

Q. Any less than that?

A. No sir; he didn't say anything about it.

Q. Just simply computed the amount due on this $1,280?

A. He wanted me to figure up—he said he had bought the farm and agreed to take up those notes of his father; he had all the business in his own name and said the business would be done with him hereafter, and wanted me to figure up the amount that was due and he would have to give me a new note or a note for the amount due some time hence; he wanted time enough to sell his land and he fixed the date, whatever the due date is there. I figured up the amount and made out a new note for it.

Q. Now then, the excess of ten per cent. on the $1,280; that is, the excess of it over and above ten per cent. on the $1,280 and up to the time it was paid, to whom was that charged?

Mr. JANES: Do you assume there was——

Q. I say there is a $1,280 note; now, when the new note was given and the amount was figured up and the $1,480 note was given, the amount due on the $1,280 was figured up; now then, how did you arrive at the $1,480?

A. In what do you mean?

Q. In figuring the $1,280 note; how did you compute it to be $1,480?

A. I figured up the note until the time it was due and I figured interest from then until the time I made out the new note.

Q. Now then, is that practically all the conversation that was had between you and J. W. Watt, or the plaintiff?

A. Why, I don't remember; that was about the——

Q. Was there anything said about bonus; he paying any bonus?

A. No sir; I didn't tell him I would charge him any bonus at all.

54 Mr. JANES: I ask that the answer be stricken out as not responsive to the question.

By the COURT: So ordered. You may answer the question.

Question read.

By the COURT: Answer yes or no.

A. No.

Q. Nothing said?

A. No.

Q. Did you charge him any bonus in making this note of $1,480?

A. I made no charge of bonus.

Q. Or interest over and above the legal rate of interest?

Mr. JANES: Let the witness state what he did; object to the question as being leading.

By the COURT: I don't think that is proper; let him state what he did or what he said.

Q. You remember any more of the conversation had between you and him relative to the amount due on this note?

A. Why, I don't——

Q. Due on the $1,280 note?

By the COURT: Simply answer yes or no, Mr. ——. He simply asks you if you remember any other conversation.

A. I can't recollect just now without my mind being called to it or something of that kind.

Q. That was practically all the conversation that was had between you and the plaintiff at the time of making this new note for $1,480?

A. Yes, practically; as far as I can remember now. I know we talked a little some about his selling the place.

Q. As to the amount due, did you tell him it would take $1,480 to pay his father's claim and carry the claim till November—or July 1st, 1897?

A. No sir.

Q. You did not?

A. No sir; I told him——

55 Q. Did you tell him that you were charging him a bonus of twenty to thirty or forty dollars?

A. No sir.

Q. Eh?

A. No sir.

Cross-examination by Mr. JANES:

Q. You are a kind of a philanthropist?

A. Not that I know of.

Q. You haven't discovered that fact yet?

A. I have.

Q. You have? What is that?

A. I have.

By the COURT: What was that question, Mr. Janes?

Mr. JANES: I asked him whether he was a philanthropist and he said he was not. Will you figure up the interest on this $1,280 note according to its terms from its date to December 31st, 1896, at ten per cent., and tell this jury how much that amounts to? Will you?

A. Why, I don't see any object in it.

Q. I just asked you, yes or no; you can answer that question?

A. No.

Q. You don't know how to figure interest at ten per cent., do you?

A. I think I do.

Q. You simply refuse to figure up this interest, do you, at ten per

cent. on this note and tell this jury how much was due on December 31st, 1896, on this $1,280 note at ten per cent.? That is what you wish us to understand?

A. On the $1,280 note?

Q. Yes.

A. I don't see that it is necessary.

Q. Well, you refuse to do it then, do you?

A. Yes.

Q. Now, don't you know, Mr. Sullivan, that in computing
56 that note, the $1,280 note, that you charged more than ten per cent. interest on that note at the time he gave you the $1,480 note?

A. Will Watt, $1,280——

Q. $1,480 note?

A. That I charged more than ten per cent.?

Q. On the $1,280 note; don't you know that that was a fact?

A. I think I did charge more than ten per cent. on the $1,280 note.

Q. You think you did charge more than ten per cent. on the $1,280 note?

A. Yes sir.

Q. Now, why did you agree to give up this note with a bonus?

A. What was that?

Q. Why did you agree to give up this $1,280 note that you had figured at a greater rate than ten per cent. and take a new note drawing simply ten per cent. without a bonus?

A. In hopes of getting our money.

Q. For the purpose of helping the plaintiff here?

A. No sir, helping ourselves.

Q. You then wanted to purge this $1,280 note of usury by taking this $1,480 note?

A. No sir, that wasn't the purpose.

Q. What is it?

A. No sir.

Q. Wasn't it for the purpose of bringing about what is called a "cut-off"?

A. No sir.

Q. You did that then out of the purest motives, did you, Mr. Sullivan?

A. I did that for the accommodation of Mr. Watt, Jr.

Q. And for the purpose of covering the matter and assisting him until he could dispose of his place, that was the idea, was it?

A. How is that?

57 Q. For the purpose of assisting him until he could dispose of his farm and pay you; that was it?

A. Yes.

Q. Now then, you didn't say anything to him about a bonus, did you?

A. I didn't tell him I would charge him a bonus.

Q. No, you didn't tell him you would charge him a bonus?

A. No sir.

Q. Why did you tell him—why did you use this cautious language that you did use in answer to Mr. McKenzie's question when you answered him saying "that you told him that was the amount—that this $1,480 was the amount necessary to settle the old claim?" Why did you use the word "necessary?" You didn't say that that was the amount due on that old note?

A. I don't think I said so.

Q. What say?

A. I don't remember just what I said.

Q. Do you mean to say you didn't use the expression "that that was the amount necessary to settle the old claim?"

A. I don't deny it.

Q. You don't mean to say then that that was the amount due, but it was "the amount necessary to settle it?"

A. That was the amount we demanded.

Q. The amount you demanded, yes; you have talked over this matter of your giving your testimony with your attorney here, Mr. McKenzie?

A. I don't think we mentioned it.

Q. Never talked the case over since it arose?

A. Talked the case over, never talked about my testimony though.

Q. Didn't Mr. McKenzie tell you in any of those conversations that charging a bonus for the past use of money wasn't usury?

A. No sir.

Q. You understood that to be the law?

A. Why, I don't know.

58 Q. You understood that an overcharge of more than ten per cent. for the past use of money was not usury under our laws, didn't you so understand it? Just answer the question?

A. Ask the question once more.

Q. Read the question.

Question read.

A. Can I ask a question?

Q. No, you answer mine.

A. I want to ask you a question.

Q. Well, I want to go on the witness stand in a few minutes if you desire to ask me a legal opinion.

A. I can hardly answer the question and express myself by yes or no.

By the COURT: Read the question.

Question read.

By the COURT: I don't see any difficulty in answering that question.

A. My idea would be—my understanding——

Q. Just yes or no.

A. I am not prepared to answer by yes or no. But I would like to state my reason.

Q. Well, state the reason; let's have it?

A. You say for the past use of money; a note may as well be in my possession.

Q. Well, we will drop that question out. Just answer the question now, if you understand it; you can answer by yes or no.

A. Well, I don't want to make a statement here that I am not sure of.

Q. Well, we will pass it along if you can't answer; you can say "no," if that is true?

A. I don't wan't to say "no" either.

Q. Well, we will simply dodge it, then. Now, Mr. Sullivan, do you remember the conversation that you had with the parties that you were doing business with the next week after December 31st, 1896, all of them?

A. No sir.

59 Q. No; you didn't charge your memory with what you said or what the other fellow said regarding the business transactions and regarding the notes in that bank?

A. Some of them I did.

Q. Did you specially charge your mind with this?

A. It is a very large amount.

Q. You didn't make any memorandum of this conversation so you can refresh your memory?

A. No, sir.

Q. Now, why did you write Mr. Watt that letter that is in evidence here, that there was $1,622 due on that $1,480 note?

Mr. McKENZIE: I think that is incompetent, irrelevant and immaterial.

By the COURT: I believe I will allow that on cross-examination.

Exception by defendant.

A. For the purpose of getting the money.

Q. Why did you add on that nineteen or twenty dollars more than there was due on that note, in that letter?

A. I don't remember the real cause.

Q. What is it?

A. I don't remember the real cause.

Q. Of, you don't remember the cause. Was that one of your philanthropic moves for the purpose of assisting this plaintiff in selling his farm?

A. I don't think it was.

Q. It wasn't one of your philanthropic measures then?

A. No, hardly.

Q. Now, as a matter of fact, Mr. Sullivan, you don't remember the conversation, just what took place at that talk with Mr. Watt at the time he gave you the $1,480 note, do you?

A. Just as I stated.

Q. You don't remember just what you said, do you?

A. Not exactly every word.

Q. You don't remember what he said?

60 A. Just the general run of the conversation, that is all.

Q. You don't remember all you said? Every word you said, just answer yes, or no.

A. Every word?
Q. Yes, sir.
A. No.
Q. Nor you don't remember every word he said either, do you?
A. No, sir.
Q. What is it?
A. No, sir.
By the COURT: Mr. Sullivan, do you know how much was due on that $1,280 note on the 31st day of December, 1896?
A. I know from the records what we charged him.
By the COURT: Well, do you know how much was really due?
A. According to the note?
By the COURT: Yes.
A. I don't remember the exact figures, Judge.

Redirect examination by Mr. MCKENZIE:

Q. I understand, Mr. Sullivan, the amount charged, or for which the new note was given was charged against the $1,280 note; that is, you figured it up and computed the $1,280 note to be $1,480?
A. That is what I figured it at.

Mr. JANES: I ask that that answer be stricken out until the question is disposed of.
By the COURT: So ordered.
Mr. JANES: Object to the question on the ground that it is leading and not redirect, and asks for an opinion or conclusion of the witness.
Objection sustained.

Q. In figuring up this $1,280 note, Mr. Sullivan, you remember at what rate you figured it?
61 A. I don't remember the rate.
Q. Well, you remember whether you charged the makers of those notes more than ten per cent.?
A. Makers of the $1,280 note?
Q. Yes.
A. I think I did.
Q. At that rate, whatever it was that you charged them made it $1,480?

Objected to as leading, not redirect examination and asks for a conclusion or opinion of the witness.

By the COURT: Did you testify that you didn't know the rate at which you figured it?
A. I testified that I didn't know the exact rate.
By the COURT: Why did you figure it any different than the rate specified in the note?
A. Well, I think we were charging Mr. Wilson Watt more than ten per cent.
By the COURT: More than the rate specified in the note?
A. Yes.

Mr. JANES: Wasn't it the usual custom in all of your loans at that time to charge the borrower more than ten per cent. at that bank?

Objected to as irrelevant and immaterial.

Objection sustained.

Mr. JANES: I don't care to take any exception.

Witness excused.

Recess taken to Thursday, October 20th, 1898, at 9.00 o'clock a. m.

J. B. SULLIVAN, recalled for the defendant.

Direct examination by Mr. MCKENZIE:

Q. What interest, Mr. Sullivan, have you in the First national bank?

A. None.

Mr. JANES: Objected to as immaterial and ask that the answer be stricken out.

62 Mr. MCKENZIE: The weight of a witness' testimony depends upon his interest in the case, your honor. I just simply want to show how he is connected with the bank.

By the COURT: My impression is it is admissible for that purpose.

Objection overruled.

Exception by plaintiff.

A. None.

Q. You have no interest in the bank?

A. No sir.

Q. No stock?

A. No sir.

Q. Now, Mr. Sullivan, just state to the jury your reason for not putting any usuary in this loan or note to the plaintiff.

Objected to as calling for a conclusion of the witness.

Objection sustained.

Exception by defendant.

Q. In making this new loan or new note with the plaintiff, what rate of interest did you charge on the money loaned?

Mr. JANES: That has all been gone over with.

By the COURT: It appears in the note and the note has been introduced in evidence.

Cross-examination by Mr. JANES:

Q. Mr. Sullivan, I call your attention to Ex. "8;" in figuring the interest on the $1,480 note at the time that the plaintiff paid you $1,603.20, the $74 item and the $49.20, were the interest that you charged on the note, were they not and it was paid to you?

A. I don't know; I know I figured up ten per cent. and he paid it.

Q. And he paid you $1,603.20?

A. I don't know as that is the exact amount.
Q. You so testified yesterday?
A. I presume that was the amount of it at that time at ten per cent.
63 Q. I think you admitted that those are your figures?
A. No, I didn't admit—I don't know whether they are or not.
By the COURT: When was that payment?
Mr. JANES: October 23rd, 1897. Well, then, all over $1,480 that the plaintiff did pay to you on account of that note was for interest, was it not, Mr. Sullivan?
A. I think so.

Witness excused.
Defendant rests.
Plaintiff rests.

Mr. McKenzie sums up the *the* case to the jury for the defendant.
Mr. Janes sums up the case to the jury for the plaintiff.
(During the summing up of Mr. Janes, Mr. McKenzie desires to except to the remark of counsel, stating that the cashier of a national bank must be a holder of five shares of stock in the bank or else he isn't a legal cashier of the bank.)

Charge.

GENTLEMEN OF THE JURY: The statutes of this State provide that no person, company, or corporation, shall directly or indirectly take or receive any money, goods or things in action, or in any other way, any greater sum or any greater value for the loan or forbearance of money than ten dollars on one hundred dollars for one year; and the statutes of the United States provide that in case a greater rate of interest than that allowed by the State law has been paid to any national bank, the person by whom it has been paid may recover back in an action in the nature of an action of debt twice the amount of interest thus paid from the association thus taking or receiving the same.
64 It is admitted by the parties to this action that the defendant—by the parties in their evidence, that the defendant bank held a note against Wilson Watt, the father of the plaintiff, date-September 26, 1895, for $1,280, bearing interest at the rate of ten per cent. per annum. The note has been introduced in evidence and marked Ex. "4," and you will have it for inspection; and it is proved without contradiction that the plaintiff had assumed the payment of this note and that on the 31st day of December, 1896, he went to the defendant bank for the purpose of procuring an extension of the time for the payment of the money due on this note, and that he then and there executed another note, dated December 31st, 1896, for the sum of $1,480, also bearing interest at the rate of ten per cent. per annum, and due July 1st, 1897. This note has been

introduced in evidence and marked Ex. "1," and you will have it for inspection.

The plaintiff claims, and it is admitted, that this note was given in lieu of the former note against Wilson Watt, for the purpose of having an extension of time to pay the same, and it is claimed by the plaintiff that there was added to the face of the last note, Ex. "1," a sum of from twenty to thirty-five dollars by the defendant in excess of said ten per cent. in payment of this loan or forbearance, and this action is brought under the United States statute to recover of the defendant twice the amount of interest thus paid.

The cashier of the defendant, as I understand his evidence, admits that there was included in the last note, Ex. "1," a greater sum than was due on the former note, Ex. "4," but he claims that this was not for the loan or forbearance of the money to the plaintiff, but it was merely an overcharge or overdemand on the amount due on the former note of Wilson Watt, and that it had no reference to the loan or forbearance to the plaintiff.

It is for the jury to determine what the evidence was and what the facts are; and if the jury find from the evidence that the
65 excessive amount, if any, included in the note of the plaintiff, Ex. "1," was merely an overcharge or demand on the amount due on the note of Wilson Watt, and that it was included in the note of the plaintiff for the loan or forbearance of money to him, while the plaintiff might, perhaps recover in a proper action the excessive amount so paid, he cannot recover in this action, as this action is based exclusively on the charge of usury; but if the jury find from the evidence that any amount included in plaintiff's note, Ex. "1," in excess of ten per cent. was knowingly included by the defendant for the loan or forbearance of the money to the plaintiff, then the plaintiff is entitled to recover of the defendant twice the amount of the interest thus paid by the plaintiff.

It is proved without contradiction that on the 23rd day of October, 1897, the plaintiff paid to the defendant $1,603.20, the full amount due on his note, Ex. "1," and if the plaintiff recover, he is entitled to recover twice the amount of interest included in this amount so paid.

As the plaintiff charges that the defendant has taken usurious interest, the burden of proof is upon him to prove this allegation by a preponderance of evidence, and if the jury find the evidence evenly balanced or that it preponderates in favor of the defendant upon this issue, then it is the duty of the jury to determine this issue in favor of the defendant, and return a verdict of no cause of action.

You, gentlemen of the jury, are the exclusive judges of all questions of fact and of the credibility of each and every witness who has testified on the trial. It is the duty of the jury to carefully and impartially weigh and consider all the evidence and all the facts and circumstances proved on the trial, and to return a verdict in accordance with the facts as you shall find them and with the law as given you by the court.

The defendant has requested me to give you some instructions,

a portion of which I give you. Number 1 refused. Number 2 refused. Number 3 given.

66 3. A contract or agreement to pay a compensation for the past use of money is not a contract to pay interest.

Number 4 given.

4. Therefore, if you find that the plaintiff gave the defendant a note for $1,480 in payment of the $1,280 note and interest and also in compensation of the past use of money represented by said $1,280 note, then you will find for the defendant, no cause of action.

The court reads the forms of verdict to the jury.

Exceptions are in order.

Mr. McKENZIE: I desire an exception to that part of the main charge which instructs the jury that the plaintiff is entitled to recover double the amount of interest thus paid.

Defendant also excepts to the refusal of the court to give its first request, which is as follows:

1. The limit of recovery in a suit for a penalty against a national bank, under the laws of the United States, where unlawful interest has been actually paid to and received by it, is twice the amount of the interest paid in excess of the legal rate, and not twice the amount of the entire interest.

Defendant also excepts to the refusal of the court to give its second request, which is as follows:

2. In the above case, if you find from the evidence that on December 31st, 1896, plaintiff and defendant entered into an agreement whereby plaintiff agreed to pay and defendant to receive a greater rate of interest for money then loaned plaintiff than ten per cent. per annum, and that in pursuance thereof the $1,480 note introduced in evidence was made by plaintiff and received by defendant, and that in pursuance of said agreement plaintiff actually paid to defendant on or about October 23rd, 1897, a greater rate of interest on the money loaned him than ten per cent. per annum, then your verdict will be in favor of plaintiff for twice the amount of interest paid by him to defendant in excess of said ten per cent. and no more.

67 Mr. JANES: I have no exceptions to the charge.

Bailiff sworn in and jury retires in charge of bailiff.

At 5.30 p. m. jury comes in stating they had not agreed on a verdict but desiring to have the court read its charge again.

The court then gives the jury its former charge and jury is ordered to retire again in charge of bailiff.

Mr. McKENZIE: I desire to have the same exceptions notes as before.

October 21st, 1898, at 9.00 a. m. jury brings in a sealed verdict as follows:

Verdict.

STATE OF MINNESOTA, }
County of Lincoln. }

District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Defendant.

We, the jury in the above-entitled action, find a verdict in favor of the plaintiff, and assess his damages at the sum of $321.94.
Dated at Lake Benton, this 20th day of October, A. D. 1898.

C. H. SPEIGHT, *Foreman.*

By the COURT: Gentlemen, the foreman signs his name considerably different from how it appears in the jury list. You may come and see it, Mr. Janes, if you would like to.

Mr. JANES: If a statement was made in the record showing that the Charles Spates on the jury list is the same man as the one who signs it here as foreman of the jury, I think under the direction of the court making such record, it is sufficient.

68 By the COURT: Mr. Foreman, are you the same person who is named in the jury list as Charles Spates, spelled S-p-a-t-e-s?

Mr. FOREMAN: Yes sir, I was summoned.

Mr. MCKENZIE: It is stipulated that a stay of proceedings be granted by consent of parties for forty days, except for such proceedings as may be necessary for a settlement of a case and motion for a new trial.

STATE OF MINNESOTA, }
County of Brown. }

I hereby certify that the foregoing is a true and correct transcript of all the evidence given and all the proceedings had upon the trial of the above-entitled action, and of the whole thereof, to the best of my knowledge and ability.
Dated, New Ulm, Minn., October 27th, 1898.

W. T. ECKSTEIN, *Reporter.*

The above and foregoing having been examined and found conformable to the truth and to contain all the evidence given on the trial of the action, the same together with the exhibits therein referred to and the pleadings to be thereto attached is duly allowed and signed as the settled case containing exceptions.
Dated Nov. 25th, 1898.

B. F. WEBBER,
Judge of the District Court, Ninth Judicial District.

Order Denying Motion for New Trial.

The above-entitled action was duly tried before the court and a jury, at a general term of said court, on the *the* 19th day of October, 1898. On the 20th day of October, 1898, the jury duly re-
69 turned a verdict in favor of the plaintiff for the sum of $321.94; and the defendant now moves for a new trial upon the following grounds, to wit:

First. That the verdict is not justified by the evidence.

Second. That the verdict is contrary to law.

Third. Error in law occurring at the trial and excepted to by the defendant.

The action was brought under sec. 5198 Revised Statutes of the United States to recover twice the amount of interest paid by the plaintiff to the defendant upon a promissory note alleged to have been usurious.

The alleged errors complained of by the defendant are the admission of the letter (Ex. 6) written by the cashier of the defendant to the plaintiff, in which he demanded the sum of $1,622 alleged to be due upon the note in suit; the cross-examination of the defendant's cashier as to why he wrote the letter; the exclusion of the evidence of the cashier as to his reason for not putting any usury in the loan; the charge of the court that if the plaintiff had paid usury he was entitled to recover twice the amount of interest paid and the refusal of the court to instruct the jury that the plaintiff was entitled to recover only twice the excess of the legal rate. In my opinion the rulings and charge complained of were correct. It was incumbent upon the plaintiff to prove that the defendant had knowingly taken a greater amount of interest than is allowed by law and, for this purpose, it was competent for the plaintiff to prove that the defendant had demanded a greater amount than is allowed by law and its reason for making this demand. The fact that the cashier demanded a greater amount than was due on the note does not render the letter containing the demand inadmissable, and if the defendant was prejudiced before the jury by the making of this excessive demand, it was the fault of its own cashier. The question of the
70 defendant's attorney to its cashier as to his reason for not putting any usury in this loan or note is not a question as to any transaction between the parties, but is equivalent to asking the cashier what was in his mind at the time, or his reason for not doing an unlawful act. I am unable to see how the answer to this question could have any possible bearing on the case and, in my opinion, it could have been properly excluded if no objection had been interposed. If for any reason the answer would have been material, the defendant should have made an offer of what he intended to prove so that the court could have seen that the testimony would have been material. Austin *vs.* Robertson, 25 Minn. 431; Norris *vs.* Clark, 33 Minn. 476; Conlan *vs.* Grace, 36 Minn. 276.

There is some conflict in the authorities as to whether a person

who has paid usurious interest is entitled to recover twice the entire amount of interest paid or only twice the amount of excessive interest, but, in my opinion, the weight of authority sustains the position of the plaintiff that he is entitled to recover twice the entire amount of interest paid. 16 Am. & Eng. Ency. of Law, 176; Crocker *vs.* First Nat. Bank of Chetopa, 1 Nat. Bank Cases, 317; Nat. Bank of Madison *vs.* Davis, 1 Nat. Bank Cases, 350; Lebanon Nat. Bank *vs.* Karmany, 3 Nat. Bank Cases, 746; Schuyler Nat. Bank *vs.* Bollong, 40 N. W. Rep. 413; Hill *vs.* Bank, 15 Fed. Rep. 432; Louisville Trust Co. *vs.* Kentucky Nat. Bank, 87 Fed. Rep. 143.

Ordered, that the motion of the defendant for a new trial be and the same is hereby denied.

Dated December 23, 1898.

B. F. WEBBER,
Judge of District Court. Ninth Judicirl District.

71 STATE OF MINNESOTA, }
County of Lincoln, } *ss:*

District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Defendant.

To F. L. Janes, Esq., attorney for the above-named plaintiff, and to John Johnson, clerk of said district court:

Please take notice, that the above-named defendant appeals to the supreme court of the State of Minnesota, from an order of the said district court entered herein, on the 24th day of December, A. D. 1898, denying defendant's motion for a new trial of said action, and from the whole thereof.

Dated this 28th day of December, A. D. 1898.

JOHN McKENZIE,
Attorney for Defendant.

72 STATE OF MINNESOTA:

Supreme Court.

Mandate.

The State of Minnesota to the honorable judges and officers of the district court of the ninth judicial district, sitting within and for the county of Lincoln, Greeting:

Whereas, lately in your court in an action therein pending, wherein John W. Watt was plaintiff, and The First National Bank of Lake Benton, Minnesota, was defendant, a certain order was entered therein December 24th, 1898, from which order said defendant appealed to this court;

And whereas, the same was duly argued, heard and submitted at the general April term, A. D. 1899, of our supreme court, after mature deliberation thereupon had, our supreme court did adjudge,

determine, decree and order "that the order of the court below herein appealed from be, and the same hereby is in all things affirmed, and that the respondent, plaintiff, above named, have judgment accordingly." A copy of the entry of judgment thereupon in this court is herewith transmitted and made part of this remittitur;

Now therefore, this mandate is to you directed and certified to inform you of these proceedings had in our supreme court in said hereinbefore-mentioned cause, and the same is hereby and herewith remanded to your court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

Witness the Honorable Charles M. Start, chief justice of the supreme court aforesaid, and the seal of said court at St. Paul, this 26th day of June, A. D. 1899.

D. F. REESE,
Clerk of Supreme Court.

73 [Endorsed:] No. 1186. Supreme court State of Minnesota Mandate To the district court of Lincoln county. John W. Watt, respondent, *vs.* First National Bank of Lake Benton, Minn. appellant Filed June 30, 1898 Earnest Sigvaldson, clerk of district court, Lincoln Co., Minnesota. —— ——, attorney for —— ——.

74 STATE OF MINNESOTA, }
County of Lincoln, }

In District Court, Ninth Judicial District.

JOHN W. WATT, Plaintiff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA, Defendant.

The above action came duly on for trial before said court and a jury at Lake Benton, in said county, on the 19th day of October, 1897. F. L. Janes, attorney, appeared for the plaintiff. John McKenzie, attorney, appeared for the defendant. The case was duly submitted to a jury and on the 20th day of October, the said jury rendered a verdict in favor of the plaintiff and against the defendant, assessing plaintiff's damages at the sum of three hundred twenty-one and $\frac{94}{100}$ dollars ($321.94).

That thereafter a motion was made by said defendant for a new trial before said court, and on December 22nd, 1898, the said motion was by R. F. Webber, the judge of said court, denied, and the order denying the same was duly filed in said court on the 24th day of December, 1898, and on the 24th day of December, 1898, the said defendant duly appealed from the said order filed therein to the supreme court of the State of Minnesota, and on the 30th day of June, 1899, a mandate from the supreme court of the State of Min-

nesota, affirming the decision of the said district court, denying said motion for a new trial was duly filed in this court.

Now, on motion of F. L. Janes, plaintiff's attorney, it is adjudged and ordered, that the plaintiff John W. Watt, have and recover judgment in this action against the said defendant, The First National Bank of Lake Benton, for the sum of three hundred twenty-one and $\frac{94}{100}$ dollars ($321.94) damages, and interest thereon, fifteen and six-hundredths dollars ($15.06) and costs and disbursements taxed this day at twenty-five and $\frac{10}{100}$ dollars ($25.10). Total judgment three hundred sixty-two and $\frac{10}{100}$ dollars ($362.10).

Dated July 6th, 1899.

EARNEST SIGVALDSON, *Clerk.*

75 [Endorsed:] No. 1186 State of Minnesota county of Lincoln district court J. W. Watt *vs.* First National Bank of Lake Benton Minn. Judgment-roll. Filed July 6, 1899 Earnest Sigvaldson clerk district court, Lincoln county, Minn.

76 STATE OF MINNESOTA, *County of Lincoln,* } *ss:*

District Court, 9th Judicial District.

JOHN W. WATT, Pl'ff,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Minnesota, Def't. } Notice of Appeal.

SIR: You will please take notice, that the above-named The First National Bank of Lake Benton Minnesota defendant appeal to the supreme court of the State of Minnesota, from the judgment of the said district court, entered herein on the 6th day of July 1899, and from the whole thereof.

Dated this 6th day of July A. D. 1899.

JOHN McKENZIE,
Attorney for Defendant.

To F. L. Janes, Esq., attorney for the above-named plaintiff, and to Earnest Sigvaldson, clerk of said district court.

77 11566.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1899.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, Minn., Appellant. } No. 125. Opinion.

This action was brought under the national banking act (Rev. St. U. St. pp. 5197, 5198), which provides:—

"SEC. 5197. Any association may take, receive, reserve and charge

on any loan or discount made, or upon any note, bill of exchange or other evidences of debt, interest at the rate allowed by the laws of the State, Territory or district where the bank is located, and no more.

"SEC. 5198. The taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same."

The principal question in the case is whether the amount which may be thus recovered back is twice the entire interest paid, or merely double the excess of the interest over the legal rate. We are not aware that this question has ever been passed upon by the
78 Supreme Court of the United States, but it has been almost uniformly held by the United States circuit courts and by the State courts that the amount of the recovery is twice the entire interest paid and not merely double the excess paid over the legal interest. 16 Am. & Eng. Enc. Law, 176, and cases cited. This seems to us to be clearly the correct construction of the statute. It would be extraordinary if Congress intended to provide for a forfeiture of all interest when no usury had been paid, but only allow a recovery of double the excess over legal interest when the interest had been paid. The word "rate" is evidently used in the same sense in both clauses of section 5198. "Greater rate," in the second clause, is the same as "a rate greater" in the first clause, and "the amount of interest thus paid" in the second is the same as "the entire interest" in the first. The entire interest forfeited is just the rate which was contracted for. Upon payment of "a greater rate" than is lawful, "twice the amount of the interest thus paid" is twice the entire interest. To say that only a part of the greater rate (that is, the excess over the lawful rate) is the amount which can be recovered back would be to do violence to the plain language of the statute. Hill *v.* Bank, 15 Fed. 432; Bank *v.* Karmany, 98 Pa. St. 65; Louisville Trust Co. *v.* Kentucky Nat. Bank, 87 Fed. 143. The only authorities we have found to the contrary are Hintermister *v.* Bank, 64 N. Y. 212 (decided, "with hesitation," largely upon the supposed authority of Brown *v.* Bank, 72 Pa. St. 209) and Bobo *v.* Bank, 92 Tenn. 444, 21 S. W. 888, which follows the Hintermister case. Brown *v.* Brown, *supra*, is not in point, the syllabus being misleading. In view of the decision of the same court in Bank *v.* Karmany, *supra*,
79 without even mentioning the Brown case, it would seem that the court did not consider that the latter case decided what was assumed in the Hintermister case.

2. There was no reversible or prejudicial error in admitting in evidence the letter from the defendant's cashier to the plaintiff. The only thing contained in it which had any bearing on the case, or could possibly have influenced the jury, was the cashier's statement

that the amount due on the note was $1,622. He had already testified to and admitted this on his cross-examination, to which there was no exception.

Order affirmed.

MITCHELL, *J.*

Buck, J., absent took no part.

80 STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion in the cause therein entitled, as appears from the original remaining on file in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom, and of the whole thereof.

Witness my hand and seal of said supreme court at the capitol, in the city of St. Paul, this 22nd day of June, A. D. 1900.

D. F. REESE, *Clerk.*

81 [Endorsed:] No. 11566. State of Minnesota, supreme court. John W. Watt respondent *vs.* First Nat. Bank of Lake Benton appellant Certified copy of opinion and syllabus (Endorsed:) Filed June 9 1899 D. F. Reese clerk. April term, A. D. 1899 Mitchell J

82 11815.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

JOHN W. WATT, Respondent,
vs.
FIRST NATIONAL BANK OF LAKE BENTON, Appellant. } No. 25. Opinion.

Per Curiam:

This case was once before this court on appeal by this appellant from an order refusing a new trial. Watt *v.* First National Bank of Lake Benton, 79th N. W. R. 509. The identical questions presented on this appeal from the judgment thereafter entered were presented and argued to this court on the former appeal and decided adversely to appellant herein, and are therefore *res adjudicata.*

As there is a Federal question involved we presume the purpose is to obtain a final judgment in this court.

Judgment affirmed.

83 STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the opinion & syllabus in the cause therein entitled, as appears from the original, remaining on file

in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom, and of the whole thereof.

Witness my hand and seal of said supreme court at the capitol, in the city of St. Paul, this 22nd day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE, *Clerk.*

84 [Endorsed:] No. 11815. State of Minnesota, supreme court. John W. Watt respondent *vs.* First National Bank of Lake Benton appellant. Certified copy of opinion and syllabus. (Endorsed:) Filed April 24 1900. D. F. Reese clerk. April term, A. D. 1900. By the court, —— J.

85 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF LAKE BENTON, Appellant. } No. 25.

Pursuant to an order of court duly made and entered in this cause, on the twelfth day of May A. D. 1900—

It is here and hereby determined and adjudged that the judgment of the court below, herein appealed from, to wit, of the district court of the ninth judicial district, sitting within and for the county of Lincoln be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the respondent above named, do have and recover of said First National Bank of Lake Benton appellant herein the sum and amount of four hundred twenty-two and $\frac{5}{100}$ dollars ($422.05) costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 12th day of May A. D. 1900.

By the court,

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees, for making return	
Printer's fees	3.00
Clerk's fees, supreme court	10.25
Filing mandate	
Affidavit	.25
Judgment entered in district court Lincoln county July 6, A. D. 1900, in favor of respondent	362.01
Interest thereon at seven per cent. to date	21.54
	$422.05

86 [Endorsed:] 11815 State of Minnesota, supreme court. Transcript of judgment. Filed May 12, A. D. 1900 D. F. Reese clerk.

STATE OF MINNESOTA, } ss:
Supreme Court, }

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court at the capitol in the city of St. Paul, this 12th day of May A. D. 1900.

D. F. REESE, *Clerk.*

87 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1900.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF Lake Benton, Appellant.

No. 25. Appeal from District Court, Ninth Judicial District, County of Lincoln.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1900, upon the return to the appeal herein.

Now after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be and the same hereby is, in all things affirmed and that the respondent above named have judgment accordingly.

Entered May 12th, A. D. 1900.

By the court.

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

88 [Endorsed:] No. 11815. State of Minnesota, supreme court. Copy of order for judgment. Filed May 12 A. D. 1900. D. F. Reese, clerk. Entered on page —.

89 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1900.

FRIDAY MORNING, 9.30 O'CLOCK, *April 20th, A. D.* 1900.

Court convened pursuant to adjournment. All the justices being present.

JOHN W. WATT, Respondent,
vs.
THE FIRST NATIONAL BANK OF Lake Benton, Appellant. } Cal. No. 25; Reg. No. 11815.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was submitted to the court for decision upon paper book and briefs of counsel and taken under advisement.

A true record.

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

90 [Endorsed:] 11815. State of Minnesota, supreme court. Copy of minutes of argument. Filed May 12 A. D. 1900. D. F. Reese, clerk.

91 [Endorsed:] No. 11815. State of Minnesota, supreme court. John W. Watt respondent against First Nat. Bank of Lake Benton appellant. Judgment-roll. Filed May 12 1900. D. F. Reese, clerk.

92 STATE OF MINNESOTA, *ss:*

Supreme Court.

STATE OF MINNESOTA,
OFFICE OF CLERK OF SUPREME COURT.

I, Darius F. Reese, clerk of the supreme court of the State of Minnesota, do hereby certify and return to the Supreme Court of the United States, that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll and all of the proceedings had in the said supreme court of the State of Minnesota in the case between John W. Watt, respondent, and plaintiff in error, against First National Bank of Lake Benton, Minnesota, appellant, and defendant in error, including the opinions of the said supreme court therein, as appears from the original files and records of said supreme court of the State of Minnesota.

And I do further certify and return that I have annexed to said transcript and included therewith a copy of the petition for writ of error, with order allowing the same, and of the bond on the writ of error and approval thereof, and the assignments of error as the same

remain on file and of record in said supreme court of the State of Minnesota, and the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with admission of service thereof, and that the foregoing constitutes a true and complete return to said writ of error.

In witness whereof, I have hereunto set my hand and seal of said supreme court of the State of Minnesota, at the capitol, at Saint Paul, Minnesota, this 23rd day of June, A. D. 1900.

[Seal of the Supreme Court, State of Minnesota.]

DARIUS F. REESE,
Clerk of the Supreme Court of the State of Minnesota.

93 [Endorsed:] State of Minnesota, supreme court. First National Bank of Lake Benton, plaintiff in error, *vs.* John W. Watt, defendant in error.

Endorsed on cover: File No. 17,826. Minnesota supreme court. Term No. 103. The First National Bank of Lake Benton, Minnesota, plaintiff in error, *vs.* John W. Watt. Filed July 9th, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 103.

FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA,

Plaintiff in Error,

vs.

JOHN W. WATT.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

This was an action brought originally in the District Court for Lincoln County in the state of Minnesota for the purpose of recovering back, under Sections 5197 and 5198, of the Revised Statutes of the United States, the sum of $323, being twice the interest paid on a promissory note alleged to be usurious. After verdict in favor of the plaintiff appeal was taken from an order denying a motion

for a new trial to the Supreme Court of the state of Minnesota. That court having affirmed the original order, the case is now brought by writ of error to this court.

The amount which the plaintiff was allowed to recover in both the District and the Supreme Court of Minnesota, was double the entire interest which had been paid under the contract.

Watt v. First Nat. Bonk of Lake Benton, 79 Minn. 266.

ARGUMENT.

The only question which it is desired here to consider, is that of the proper construction to be placed upon the sections of the Revised Statutes of the United States, above cited. Those sections read as follows:

"Sec. 5197. Any association may take, receive, reserve and charge on any loan or discount made, or upon any note, bill of exchange or other evidences of debt, interest at the rate allowed by the laws of the state, territory or district where the bank is located, and no more.

"Sec. 5198. The taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same."

The issue between the parties is very sharply defined. It is contended by the defendant in error that in cases where usurious interest has been paid, the party paying the same may, under Section 5198, recover back in an action in the nature of an action of debt, twice the amount of the entire interest thus paid. On the other hand, it is our contention that the defendant in error was entitled to recover back in an action instituted under the above statute, a penalty equivalent simply to double the amount of the usurious excess so paid.

We are aware that on the question thus presented there has been considerable difference of opinion among the various state courts. It is our purpose here to show that on principle and on the better authority the amount of recovery should be limited under this statute, to double the usurious excess which has been paid. We are inclined to the belief that those courts which have allowed a recovery of double the entire interest, have been actuated by a rather over-zealous desire to favor the debtor as against the creditor, and have thus been led to enlarge upon the true meaning and intent of the statute.

We submit the following propositions:

First, *the statute was designed, in so far as it is applicable to cases where the debtor sues to recover back, merely to afford a simple and convenient method of relief in an action at law, which relief was not to extend further than that formerly afforded by courts of equity.*

It was early established, both in England and in this country, that the victum of the usurious contract, might seek relief therefrom in a court of equity. Even where he had paid the principal and usurious interest, he was entitled to a decree remitting him to the position which he would have occupied had no usury been exacted.

In cases where the principal and usurious interest had not been paid by the debtor, it was the universal practice to deny him any form of relief from the contract unless he made a tender of the principal and legal interest, it being regarded as against equity and good conscience to permit the complainant to come into court under any other circumstances. Furthermore, in cases where the debtor had paid up under the contract, he was entitled to relief, but such relief went only to the extent of a decree for the re-payment to him by the creditor of the usurious excess which had been exacted. The court universally held that it was against equity and good conscience to deprive the creditor of any part of the principal or legal interest. It is to be observed, therefore, that in the absence of statutory regulation, the debtor's claim to relief went only to the usurious excess and not to the entire interest. These principles have been laid down in

Jones v. Barkley, 2 Douglass, 697.
Fitzroy v. Gwillin, 1 T. R. 153.
Dey v. Dunham, 2 John. Chan. 191.
Fanning v. Dunham, 5 John. Chan. 123.
Palmer v. Lord, 6 John. Chan. 95.
Zeigler v. Scott, 10 Ga. 389.
Clarkson's Admr. v. Garland, 1 Leigh, 147.
Dole v. Northrop, 19 Wisc. 249.
Baum v. Thoms, 50 N. E. 357 (Ind.)

The views suggested by the defendant in error involves so wide a departure from the established practice as above shown, that it will not be presumed that Congress meant to enforce such views without the employment of plain and unambiguous language to that effect. Surely, a practice which has prevailed, we may say for centuries, should be given the benefit of any possible doubt.

Farmers Etc. Nat'l Bank v. Dearing, 91 U. S. 29, 35.

By providing for a recovery back in an action at law, of interest "so paid," the presumption would seem to be conclusive that Congress meant to permit a recovery back along those lines which had been laid down by courts of equity long before. It is only another case of an equitable doctrine being adopted perforce of statute by courts of law.

Second. *The statute under consideration is penal in its nature, and should therefore be strictly construed.*

This proposition we do not think will be seriously disputed. Such legislation on its very face purports to impose a penalty for the violation of a principle of public policy. In all of the cases discussing these sections of the Revised Statutes, their penal character is either assumed or openly assented to.

Barnet v. Nat. Bk., 98 U. S. 555.

Nash v. White's Bank of Buffalo, 37 Hun. 57, and other cases cited herein *possim*.

This being so, the well established maxim that such statutes are to be strictly construed, applies. We do not deem it necessary to cite authorities in favor of so plain and obvious a principle of law. From this point of view, it is difficult to see the justification for a construction allowing the recovery back of double the entire interest. It is respectfully insisted that a mere perusal of Section 5198 reveals its ambiguity. To be sure, the first part of the section dealing with attempts by the creditor to enforce the usurious contract is perfectly clear. He cannot enforce the payment of anything beyond the principal; the entire interest is forfeited; but when we come to the second part of the section, the word "entire" does not appear. It is only said that where the greater rate of interest has been paid, the party paying the same may recover back "twice the amount of the interest thus paid." This language is by no means clear and indubitable. The very fact that it has given rise to the difference of opinion among learned judges, which will appear from the briefs in this case, is ample evidence of the difficulties which the language presents. A liberal or a strict construction thereof makes all the difference between a decision pro and a decision contra. We do not think that it can for an instant be contended that this is a remedial statute to be construed in advancement of the remedy sought to be given by the statute considered as a whole. It can only be regarded as penal, and in that light the court has only one course to pursue, and that is to apply to the statute those principles

of strict construction which preclude any enlargement whatever upon the precise language which the legislature has employed.

"Equitable constructions though they may be tolerated in remedial, and perhaps in some other statutes, should always be resorted to with great caution, and never extended to penal statutes or mere arbitrary regulations of matters of public policy. The power to extend the meaning of a statute beyond its words and deciding by the equity and not the language, approaches so near the power of legislation that a wise judiciary will exercise it with reluctance and only in extraordinary cases."

Monson v. Chester, 22 Pickering, 385.

See also Farmers' etc. Nat'l Dearing, 91 U. S. 29, 35.

Oates v. Nat'l Bank, 100 U. S. 239.

That statutes prescribing a penalty for the taking of usurious interest are to be strictly construed, see

Tiffany v. Bank of Missouri, 18 Wall. 409.

U. S. v. Kansas Pac. Ry., 26 Fed. Cases, 680.

Pardoe v. Iowa State Nat'l Bank, 106 Ia. 345.

We do not wish to be understood as asserting that the rule of rigorous construction forbids a consideration of the general purpose which the legislature had in mind as gathered from the whole statute, in order to determine the precise meaning of the language employed, but we do insist that where that language in a penal statute is such as to admit reasonably of two constructions, then it is the duty of the court to adopt that construction which will preserve the rights of the party against whom the penalty is sought to be directed in the

same state as they were or would have been before the statute was enacted. It has been law from time immemorial that general words of a penal statute are to be restrained for the benefit of him against whom the penalty is inflicted. These principles were laid down in

Schooner Industry, 1 Gallison, 114.

This court in its strict construction of the statute under consideration has gone so far as to hold that the remedy provided for therein is exclusive in this sense—that the action to recover back must be a separate and independent one, and that the remedy cannot be availed of by way of counterclaim.

Barnet v. Nat'l Bank, *supra*.

To construe the second part of Section 5198 so as to involve a recovery back of the entire interest paid, is clearly, within the meaning of the decisions, a strained inference gathered from the first part of that section. Such inferences are unjustifiable in the extreme in dealing with a statute of this character.

Section 5198 manifestly provides for two separate and distinct classes of cases: First, a case where the creditor attempts to enforce the terms of usurious contract; and, second, the case where the debtor seeks to recover what he has paid on such a contract. Barnet v. Nat. Bank, 98 U. S. 555. In the one case, it is true, the entire interest is forfeited. In the other case the intention of the legislature is not clearly exhibited. Are we, therefore, permitted to infer that because in the former case

the legislature provided for a forfeiture of the entire interest, it was its intention so to provide in the latter? The contrary inference is surely not so unreasonable as to involve a stultification of legislative language or to warrant the criticism that such construction would be frittering the statute away by metaphysical niceties. Such a construction leaves a penalty. The only question is, how great that penalty was intended to be. The discrepancy between the penalties in the two cases may well be explained on the ground that the legislature intended to leave to national banks a *locus poenitentiae*. It would have been a perfectly easy matter for the legislature to provide for the forfeiture of the entire interest in the second case, had it so intended. In view, therefore, of the character of this statute and the language employed therein, the construction contended for by the defendant in error cannot be adopted.

Third. *The question has been judicially determined in accordance with the contention of plaintiff in error.*

Hintermister v. 1st Nat'l Bank, 64 N. Y. 212.
Bobo v. Peoples Nat'l Bank, 21 S. W. 888, (Tenn.)
Hardin v. Trimmier, 9 S. E. 342, (S. C.)
Nat'l Bank v. Johnson, 104 U. S. 271.
Nash v. White's Bank of Buffalo, 37 Hun. 57.
First Nat. Bank v. Denson, 22 So. 518 (Ala.)

Ever since the Hintermister case, the law has been established in favor of a recovery of only

double the excess, in New York. This doctrine has been enforced in many cases within that jurisdiction. The New York legislature, moreover, enacted a statute in every important respect similar to the sections under consideration. The construction which has been placed upon that local statute follows the lines laid down in the Hintermister case.

Nash v. White's Nat'l Bank of Buffalo, *supra*

It is not necessary for us to enter upon a long discussion of the authorities cited. The argument which we wish to press upon the court is well set forth in those decisions. We desire, however, especially to direct the court's attention to the case of Nat'l Bank v. Johnson, *supra*. That was an action brought in the Supreme Court of the state of New York by Johnson, to recover from the bank penalties alleged to have been incurred under Sections 5197 and 5198. Johnson was allowed to recover in the courts of New York the sum of $5470.72, such sum being double the interest which had been collected in excess of the rate allowed by the general laws of the state. The significant fact that the amount sued for was *double the excess* was noted in the statement of the case in the Supreme Court, and the case of Hintermister v. The National Bank, supra, was called to the attention of this court, although on another point. This court in that case assumed that double the excess was the proper amount recoverable in the action. Learned counsel, coming as they did from a state where the question of construction had been

so definitely settled, evidently overlooked the fact that this court had not finally passed upon the question and neglected to argue it. The fact, however, remains that although perhaps unconsciously so far as we are left to judge from the opinion, the question was passed upon, inasmuch as the judgment of the New York Court was affirmed. The whole question was before the court.

Some of the arguments appearing in the cases contra, which will be cited by counsel for defendant in error, may be briefly noticed. It is said that it would be absurd to suppose that Congress would provide a penalty of forfeiture of the entire interest for the making of a usurious contract, and at the same time provide for the forfeiture of only double the usurious excess as a penalty for the actual carrying out of such contract. In other words, it is said that there should be at least as heavy a penalty for the consummation of a usurious intention as for the simple manifestation of such intention by contract. The force of this line of reasoning is weakened at the outset when we consider that national banks have always been regarded both by Congress and by this court as national favorites—Tiffany v. Nat. Bank of Missouri—it may well have been, in view of such policy, the intention of Congress to allow these banks a *locus poenitentiae*. The long established course of legislative dealing with these banks renders it not only possible, but probable, that Congress meant to allow these banks an opportunity, even after the making of a usurious contract, to repent and accept only

the principal and legal interest. This view is borne out by the fact that, as is well established by the decisions, the act of usury is never regarded as consummated until actual payment was not only exacted, but made under such contract.

Wycoff v. Longhead, 2 Dall. 92.
Musgrave v. Gibbs, 1 Dall. 216.
Turner v. Calvert, 12 S. & R. 46.

Indeed, this court has consistently held that the borrower does not become entitled to his action of recovery back under Section 5198, until something beyond principal and legal interest has been paid by him on the alleged usurious contract. Not until he has in point of fact paid some of the usurious excess, is he held to have any action under the second part of that section.

Brown v. Marion Nat'l Bank, 169 U. S. 416.
Daingerfield Nat'l Bk v. Ragland, 181 U. S. 45.
McBroom v. Scottish Investment Co., 153 U. S. 318.

In the cases cited, it was held that the two-year limitation upon the action to recover back, did not begin to run until the usurious excess was actually paid. This has also been held in the state courts.

First Nat'l Bank v. Denson, 22 So. 518.

We cannot see how these decisions would be consistent with any holding such as is contended for by the defendant in error. If from one point of view the second half of Section 5198 looks to the excess, then it should always so look.

This construction is also consonant with the wording of the statute. It is said: "In case the greater rate of interest has been paid," then the action to recover back is permitted. The greater rate of interest referred to is the rate in excess of that permitted by law. Now, under this statute, if the borrower should pay not the greater rate which may well have been charged under the contract, but should pay only such portions of that greater rate charged as would correspond to the legal rate, then, under the statute, we submit he would have no action whatever to recover back, for it is only in case the greater rate has been paid that he is entitled to his action in the nature of an action of debt under Section 5198. The law clearly omits to provide for the case where the borrower under a usurious contract pays merely the principal and legal interest, thereby enforcing the theory of the existence of a *locus poenitentiae*, as above suggested.

Brown v. Marion Nat'l Bank, 169 U. S. 416.

In still another aspect the argument of the defendant in error is faulty, for it assumes that the penalty of forfeiture of the entire interest is in legal contemplation a greater penalty than a forfeiture of double that usurious excess. In most cases this would probably be so, but it is not necessarily so, for the excess may well be greater than the legal rate.

Finally, the charge that the construction contended for by the plaintiff in error would involve

an inconsistency on the part of Congress, is absolutely without foundation. As the law would stand if construed as we suggest, there would exist a forfeiture of the entire interest wherever the contract was sought to be enforced before consummation. Then, in case payment has been made by the borrower and such payment involves an excess over the legal rate of interest, a recovery might be had not only as at common law for the simple excess, but for double such excess. The duplication would be by way of penalty. Now, this construction admits of a *locus poenitentiae* as above stated, and is obviously on that account in furtherance of good morals and a preventive to litigation, for if the lender sees fit even after the making of the usurious contract, to repent and exact simply what he is entitled to, then, as we have seen, there can be no action in the courts. It is only when the lender adopts a positive and affirmative attitude with respect to his contract that he is to forfeit the entire interest. The law is not designed to place any obstacle in the way of the lender's retaining that to which he is justly entitled, that is to say, the principal and legal interest; but where he sues upon a contract usurious upon its face, the law will not permit him to exact performance of that contract, and where he retains the usurious interest exacted in accordance with the terms of such a contract, the law will not permit him to retain anything above what the common law regarded him as entitled to, namely, the principal plus legal interest. He will in the later case not only be forced

10323

to give up the excess as at common law, but will be compelled to give up double such excess, as a penalty for the exaction thereof. This construction is consistent with every sound principle of public policy. If, on the other hand, the construction contended for by defendant in error should be adopted the law would present strange anomalies. The borrower would then be in a far better position after he had paid than before he paid; for where he could only avoid paying interest on the money he had borrowed if he refused to pay, he could recover back twice the amount of the entire interest if he actually came in and paid the usury. We cannot believe that it could have been the intention of Congress to authorize a system which would be open to such flagrant abuses as this. A premium would be placed upon compliance with the usurious contract on the part of the debtor. It would be financially beneficial to him to carry out such a contract. To our mind it is manifestly more consistent with public policy and good morals to construe this statute so as to set up a system having a tendency to reform the guilty party, rather than a system having an unmistakable tendency to induce the party originally innocent to come in and share in the guilty transaction.

Respectfully submitted,

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No. 103.

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Supreme Court of the United States.

Filed Jan. 15, 1902.

OCTOBER TERM, 1901.

No. 103.

FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA,

Plaintiff in Error,

vs.

JOHN W. WATT,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

F. L. JANES,
Counsel for Defendant in Error.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 103.

FIRST NATIONAL BANK OF LAKE BENTON, MINNESOTA,

Plaintiff in Error,

vs.

JOHN W. WATT,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF FACTS.

As stated by plaintiff in error in its brief, this was an action brought originally in the District Court of Lincoln County, Minnesota, by defendant in error vs. plaintiff in error, for the purpose of recovering back, under sections 5197 and 5198 of the Revised Statutes of the United States, the sum of about $323.00, being twice the interest paid on a promissory note alleged to

be usurious. After verdict in favor of the plaintiff, appeal was taken from an order denying a motion for a new trial to the Supreme Court of the State of Minnesota. That court having affirmed the original order, the case is now brought by writ of error to this court.

The amount which the plaintiff was allowed to recover in both the District and Supreme Court of Minnesota, was double the entire interest which had been paid under the contract.

Watt vs. First Nat'l. Bank of Lake Benton, 76 Minn. 458, and 79 Minn. 266.

ARGUMENT.

The only question in this case is one of statutory construction, and that is whether the amount which may be recovered back is twice the entire interest paid or merely double the excess of the interest over the legal rate. The Revised Statutes of the United States, sections 5197 and 5198, provide:

"Sec. 5197. Any association may take, receive, reserve and charge on any loan or discount made, or upon any note, bill of exchange or other evidences of debt, interest at the rate allowed by the laws of the state, territory or district where the bank is located, and no more."

"Sec. 5198. The taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be

deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same."

Under the banking law of February 25th, 1863, United States Statutes—usury forfeited the entire loan or debt. This, however, was deemed too severe by Congress hence the act of 1864 was enacted which contains the foregoing sections.

Sec. 5197 limits the rate of interest to that allowed by the law of the state, territory or district where the bank is located.

Under Sec. 5198 two categories are defined and the consequences denounced.

1. Where illegal interest has been *knowingly* stipulated for, but *not paid*, there only the sum lent without interest can be recovered.

Lucas vs. Bank 78 Pa. St. 231.

Bank vs. Karmony 98 Pa. St. 65.

Gutherie vs. Reid 3 National Bank Cases 753.

Brown vs. Marion National Bank 169 U. S. 415.

It is well settled law that where a National bank takes, receives or charges more than the legal rate of interest on the discount of the note, the interest bearing power of the note is destroyed. It is a dead note

thereafter so far as interest is concerned, not only is the usurious interest forfeited but the interest accruing by law thereafter is forfeited and the bank cannot recover more than the face of the note.

Alves vs. Henderson 3 National Bank Cases 452.

Petersborough National Bank vs. Childs ib. 469.

2. Where the greater rate of interest *has been paid*, then twice the amount of the entire interest so paid can be recovered in a penal action of debt or suit in the nature of such action against the offending bank brought by the person paying the same or his legal representative.

The great weight of authority of both the Federal and State Courts affirms this second proposition and it has been uniformly held that in an action against a National bank, which has received usurious interest, for twice the interest paid, the recovery is of twice the entire interest paid and not merely of double the excess of interest over the legal rate.

Hill vs. Nat'l Bank of Barre, 15 Fed. Rep. 433 (Cir. Ct. Vermont.)

Crocker vs. First Nat'l Bank, 4 Dill. 358 (I Nat'l Bank Cases 317.)

Nat'l Bank of Madison vs. Davis, 8 Bis. 100 (I Nat'l Bank Cases 350.)

Lebanon Nat'l Bank vs. Karmony, 98 Pa. St. 65. (III Nat'l Bank Cases 746.)

Schuyler Nat'l Bank vs. Bullong, 24 Neb. 825. (III Nat'l Bank Cases 561.)

Bank vs. Garlinghouse, 22 Ohio, St. 492.

Bank vs. Overholt, 96 Pa. St. 329.

Bank vs. Trimble, 40 Ohio St. 629.

Louisville Trust Co. vs. Kentucky Nat'l Bank, 87 Fed. Rep. 143, and also in 102 Fed. Rep. 442.

Bank vs. Moore, 2 Bond 174.

43 Pac. Rep. 839 (Kan.)

42 Pac. Rep. 936 (Kan.)

Boerner vs. Trader's Nat'l Bank,

39 So. W. Rep. 285 (Tex.)

Colgin vs. City Nat'l Bank,

40 So. W. Rep. 634 (Tex.)

40 So. W. Rep. 903 (Ky.)

22 South Rep. 518 (Ala.)

Usury was an offense at common law, and the usurer was not only punished by the Censures of the church in his lifetime, but was denied a Christian burial; and by the laws of Alfred the Great, and Edward the Confessor, if, after death even, a man was found to have been a usurer, his goods were forfeited to the crown, and his lands to the lord of the fee.

Under Henry VIII a statute was enacted revising the former laws and is the foundation of all statutes prohibiting usury.

Subsequently an act, Statute 12, Anne, was enacted which remained the law in England until the Statute of Usury was repealed by Statute 17 and 18 Vict. and the parties left to make whatever contract they chose in respect to interest.

Under Statute 12 Anne the rate of interest was fixed

at 5 per cent. and the taking, etc., of a greater rate was punished by a forfeiture of the entire debt, and it was at one time held in England that the borrower was in *pari delicto* with the lender and therefore could not recover back usury voluntarily paid, but this doctrine was finally repudiated. Clarke vs. Shee, Cowp. 200.

From this brief history of the law of usury it is apparent that the act of Congress of February 25th, 1863, forfeiting the entire debt for its violation but reenacted the common law and when Congress deemed the penalty too severe repealed the provision forfeiting the entire debt and left the Statute as we now find it. They simply reduced the penalty to the usurer.

Surely the construction of said Sec. 5198, as placed on it by the learned courts in the many decisions before cited, and as contended for by the defendant in error, cannot be said to be a "wide departure from the established" law or practice.

The statute in question is remedial as well as penal and is to be liberally construed to effect the object Congress had in view in enacting it. In Ordway vs. Central National Bank of Baltimore, 47 Md. 217, the court says in construing this section: "The cause of action is a forfeiture or penalty of a civil nature, for the exacting and taking of usurious interest upon money loaned and the remedy given by statute, is by a private civil action of debt to the party grieved. The government or the public is not concerned with

it. It is, therefore, a private right pursued by a private civil action, and it has been decided that the section upon which the action is founded, is remedial as well as penal, and is to be liberally construed to effect the object which Congress had in view in enacting it," and cites Farmers', etc., National Bank vs. Dearing, 91 U. S. 29. See also, Gray vs. Bennett, 3 Met. 522. But we do not consider that the question whether this statute is one to receive a liberal or a strict construction can be of any avail to the usurer. The statute is plain and unambiguous. This action is brought upon the second clause of section 5198. The highest lawful rate of interest in Minnesota is ten per cent and the plaintiff paid about sixteen.

We cannot find nor can we suggest any clearer exposition of the statute in question than to use the words of *Wheeler, J.*, in Hill vs. National Bank of Barre, *supra:*

"The whole section must be read together to ascertain the meaning of this clause. The first clause provides that the taking, receiving, reserving or charging a rate of interest greater than is allowed by law shall be deemed a forfeiture of the entire interest. Here there is no distinction of the excess of the legal rate over the rest; then the clause in question proceeds to provide that in case the greater rate of interest has been paid the person by whom it has been paid may recover back twice the amount of the interest thus paid. The continuing the exaction till it had accom-

plished the payment of the amount exacted is a greater offense than the mere stipulating for the payment, and would be treated with greater severity. The first clause seems to be intended for the punishment of the latter offense and the second for that of the former. The greater rate in the second clause is the same as a rate of interest greater in the first; and the amount of the interest thus paid in the second is the same entire interest mentioned in the first. The difference between the offenses is the difference between exacting an agreement to pay and exacting actual payment, and the difference between the consequences imposed is the liability to lose once the interest in the former case and twice the interest in the latter."

And *Mitchell, J.*, in deciding this case, see 76 Minn. 459, says: "It would be extraordinary if Congress intended to provide for a forfeiture of all interest when no usury has been paid, but allow a recovery of double the excess over legal interest when the interest has been paid. The word "rate" is evidently used in the same sense in both clauses of section 5198. "Greater rate" in the second clause is the same as "a rate greater" in the first clause, and "the amount of the interest thus paid" in the second is the same as "the entire interest" in the first. The entire interest forfeited is just the rate which was contracted for. Upon payment of "a greater rate" than is lawful, "twice the amount of the interest thus paid" is twice the entire interest. To say that only a part of the greater rate (that is, the excess over the lawful rate) is the

amount which can be recovered back would be to do violence to the plain language of the statute."

The Court's attention is called to the reasoning in Brown vs. Marion Nat'l Bank, 169 U. S. 415, wherein the foregoing construction is substantially followed.

As has been before stated, if the borrower does not pay the note containing usurious interest and an action is brought by the bank on the note, the bank will forfeit the *entire interest* under the statute. It necessarily follows from this that if the theory as contended for by plaintiff in error is the correct one, it would make the consequences of *agreeing to take* greater than the *actual taking* in most cases, for the loss of the entire interest would be greater than the loss of twice the excess unless the excess should equal or exceed half the rate stipulated for, which would not be usual. We do not believe that the maker who pays the usurious note under the statute, is in a worse position than he who does not pay.

Some courts have construed the Statute in accordance with the contention of plaintiff in error.

In Hintermister vs. Bank, 64 N. Y. 212, *Allen, J.*, who delivered the opinion seemed to be endeavoring to find an avenue of escape from the penal clause of the statute creating a double liability of both interest and usury and says that "the language of the act is satisfied by restricting it to a recovery of double the interest paid in excess of the legal rate" and concludes that he arrives at such conclusion with "*great hesitation*" and cites Brown vs. Second National Bank, 72 Pa. St. 209, as an authority for his conclusion, but

from an examination of this case it is apparent that the court therein does not pass upon the question. And in Lebanon vs. Karmony, 98, Pa. St. 65 the court holds adversely to the contention of plaintiff in error and does not even refer to Brown vs. Bank, *supra*.

Bobo vs. Peoples' National Bank, 21 S. W. R. 888 (Tenn.) follows the Hintermister case and cites Brown vs. Bank, *supra* as a case in point.

The courts of two other states, South Carolina and Alabama have followed the Hintermister New York case. Certainly it cannot be very cogently urged that a decision arrived at "with great hesitation" and a decision that does not decide the question at all are very valuable as precedents to be followed by the courts of Tenn., South Carolina and Alabama.

Counsel for plaintiff in error seem to be especially gratified with the decision of this court in National Bank vs. Johnson 104 U. S. 271.

That was an action brought in the Supreme Court of New York to recover double the excess $2735.36 charged above the legal rate of interest by the bank and paid by Johnson. Judgment was entered for $5470.72, twice the amount of such excess to reverse which a writ of error was prosecuted. The decree of the lower court was affirmed. The counsel followed the New York rule as announced in the Hintermester case, and it was conceded that the proper measure of damages had been given, at least that question was not raised or discussed by counsel or passed on by this court, in so far as the reported decision discloses. This decision is as valuable in fixing the construction

of the statute as is First Nat'l Bank of Charlotte vs. Morgan, 132 U. S. 141, which was an action brought under sections 5197 and 5198 in the State court of North Carolina, by Morgan, to recover from said bank twice the *amount* of the interest paid on alleged usurious contracts. The jury in response to issues submitted to them found that Morgan had paid on the usurious contracts the sum of $554.28, and returned a verdict against the bank for twice that sum. Judgment was accordingly rendered in favor of Morgan, and the judgment having been affirmed by the Supreme Court of North Carolina was remanded to this court by writ of error. The question as to the proper measure of damages, was not raised by counsel or passed upon by this court, the only question submitted being one of jurisdiction, that of the State Court to take cognizance of the action. The counsel conceded that if plaintiff was entitled to recover at all it was for double the amount of the entire interest paid.

See also National Bank of Daingerfield vs. Ragland 181 U. S. 45, where double the entire interest paid was recovered and such rule of damages was not questioned in this court and the decision of the State Court of Texas was affirmed.

It is urged by counsel for plaintiff in error that National banks have always been regarded by both Congress and this court as national favorites and suggest that it may have been the intention of Congress, in view of such policy, to allow these banks a *locus poenitentiae*. While it is true that a bank like a person is subject to repentance and reformation and the

strong power of Congress should not be denied to it in its honest efforts to reform and purge its contracts of usurious interest, yet we submit that when a contract is fully executed, that is, the bank has received from the borrower full payment of its principal and usurious interest, the day for repentance has passed, and the bank's plea for mercy should be denied.

The bank has the matter, as it were, entirely in its own hands; after usury has been contracted for and before payment, the bank can if it wishes to repent and accept the principal loaned without subjecting itself to any penalty the avenue is open and clear for it to do so, but if it postpones the day of repentance and exacts payment of the principal, interest and usury it subjects itself to the penalty of the statute and it is too late for it to repent. If on the other hand, as suggested by counsel for plaintiff in error, a premium would be placed upon compliance with the usurious contract on the part of the debtor and that it would be financially beneficial to him to carry out such a contract, then the bank can refuse to accept only the principal and legal interest, and thus put it beyond the power of the debtor to make money out of the transaction. The bank is the arbiter of its own fortune. If it keeps within the law it does not suffer—if it violates the law the penalty it must suffer is measured by its own avarice and greed; it imposes its own penalty or fine, not the court.

Respectfully submitted,

F. L. JANES,

Counsel for Defendant in Error.

Supreme Court of the United States.

No. 103.—October Term, 1901.

The First National Bank of Lake Benton, Minnesota, Plaintiff in Error, *vs.* John W. Watt. } In error to the Supreme Court of the State of Minnesota.

[February 24, 1902.]

By this action, which was commenced in a court of the State of Minnesota, recovery was sought from the First National Bank of Lake Benton, Minnesota, plaintiff in error here, of twice the amount of the entire interest which it was alleged had been paid to that bank by Watt, plaintiff below, who is the defendant in error on this record. The right to the relief was based on the averment that the bank had, in violation of the law of the United States, received from Watt usurious interest. The cause was tried to a jury and a verdict returned in favor of Watt. From an order denying a motion for a new trial an appeal was taken to the Supreme Court of the State of Minnesota, and that court affirmed the judgment. (76 Minn. 458.) Upon the return of the record to the trial court, judgment was entered on the verdict of the jury. Another appeal was then taken and the judgment was affirmed. (79 Minn. 266.) The case was then brought to this court by writ of error.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the Court.

The contention of the plaintiff in error is that the State court erroneously condemned it to pay twice the amount of the entire interest which it had collected because it had taken a usurious rate, whilst under the law of the United States, it is insisted, the recovery should have been not twice the amount of the entire interest, but only twice the sum by which the interest received exceeded the lawful rate. To dispose of this contention involves ascertaining the meaning of sections 5197 and 5198 of the Revised Statutes of the United States, which are as follows:

"Sec. 5197. Any association may take, receive, reserve and charge on any loan or discount made, or upon any note, bill of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory or district where the bank is located, and no more, except that where by the laws of any State a different rate is limited for banks of issue

organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this title. When no rate is fixed by the laws of the State, or Territory, or district, the bank may take, receive, reserve or charge a rate not exceeding seven per centum, and such interest may be taken in advance, reckoning the days for which the note, bill or other evidence of debt has to run. And the purchase, discount or sale or a *bona fide* bill of exchange, payable at another place than the place of such purchase, discount or sale, at not more than the current rate of exchange for sight-drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

"SEC. 5198. The taking, receiving, reserving or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided, such action is commenced within two years from the time the usurious transaction occurred. (That suits, actions and proceedings against any association under this title may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established, or in any State, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases.)"

The argument that the recovery should have been limited to twice the amount by which the usurious interest exceeded the legal rate is predicated on what is assumed to be the correct construction of the second sentence of section 5198 above quoted. The sentence relied on is as follows:

"In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided such action is commenced within two years from the time the usurious transaction occurred."

It is urged that the statute is penal in its character and must be strictly construed, therefore the sentence relied upon must be interpreted as relating solely to the usurious portion of the interest paid, and not to so much of the rate of interest as was lawful. Although it be conceded that the statute is penal in character, we do not consider, even under the strictest rule of construction, it is possible to give to it the meaning contended for without departing from its unambiguous letter, and thereby frustrating its obvious intent. The first sentence of the section provides that "the taking, receiving, reserving or charging a rate of interest greater than is allowed, . . . when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or

which has been agreed to be paid thereon." This, without the slightest ambiguity, provides for the forfeiture, not of the amount by which the usurious has exceeded the lawful rate, but of the entire interest. When the statute then proceeds, in the very next sentence, to say "In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back . . . twice the amount of the interest thus paid," it cannot in reason be held that the words, "the interest thus paid," refer to any other sum than the entire interest as provided in the previous sentence. To hold otherwise would be to decide that the statute forfeited the entire amount of interest whenever a usurious rate had been taken, received, reserved or charged, and yet limited the debtor's right to recover back only to twice the amount of the excess of the usurious over the legal rate. This would be to interpret the law as in one sentence imposing a forfeiture of the entire interest, whilst in the next sentence it rendered such forfeiture, in many cases, absolutely nugatory. That such would be the result becomes apparent when it is considered that whilst it is conceded that in case usurious interest is received the entire amount is forfeited, it is yet argued that in case suit is brought to recover the forfeited usurious interest, the entire interest received cannot be awarded. The contention otherwise stated is this: The entire interest in the event usurious interest is received is forfeited at the election of the creditor, such election on his part, by which the forfeiture is escaped, being manifested by his insisting on retaining the money taken by him in violation of the statute. This, however, involves not only the conflict pointed out by the considerations just mentioned, but the further contradiction that the greater the violation of the statute the lesser the penalty which it imposes. The disregard of the text and the confusion as to the purpose of the law, which the argument involves, disappears if the statute be harmoniously enforced according to its letter and spirit. By both it is apparent that the statute on the one hand causes a forfeiture of the entire interest to result from the taking, receiving, reserving or charging a rate greater than is allowed by law, and on the other subjects the creditor to pay twice the amount of the entire interest illegally exacted if by persistence in wrongdoing he subjects the debtor to the necessity of suing to recover.

Whilst the question here presented has not been heretofore passed upon by this court, the Circuit Courts of the United States have had occasion frequently to consider it, and have uniformly construed the statute in accordance with its plain import as we have just expounded it. (*Nat'l Bank of Madison* v. *Davis*, 8 Biss. 100; *Bank* v. *Moore*, 2 Bond, 174; *Crocker* v. *First Nat'l Bank*, 4 Dill. 358; *Hill* v. *Nat'l Bank of Barre*, 15 Fed. Rep. 433; *Louisville Trust Co.* v. *Kentucky Nat'l Bank*, 87 Fed.

Rep. 143, 149; Ibid., 102 Fed. Rep. 442.) The State courts of last resort have also, as a general rule, upheld the same construction. (*Bomer* v. *Traders' National Bank*, 90 Texas, 443, and authorities there cited.) True it is that in a few cases some State courts have hesitatingly taken an opposite view; but we think, for the reasons which we have given, the letter of the statute is too plain and its intention too manifest to justify such an interpretation.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.